

### **Prior Judicial Experience**

Judicial  
Internships/        **Yes**  
Externships  
Post-graduate  
Judicial Law        **No**  
Clerk

### **Specialized Work Experience**

### **Professional Organization**

Organizations        **Just the Beginning Organization**

### **Recommenders**

Dorsey, Arnette  
arnette.dorsey@eeoc.gov  
Whetstone, Kayonia  
ProfWhetstone@gmail.com  
9174464810

Lombo, Nicolas  
nicolas.lombo@troweprice.com

**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

**Kierra Booker**

Washington, DC

kierra.booker@law.bison.howard.edu | (301) 938- 9926

June 18, 2023

The Honorable Judge Jamar K. Walker  
Walter E. Hoffman  
United States Courthouse  
600 Granby Street  
Norfolk, VA 23510

Dear Judge Walker,

I hope this letter finds you well. My name is Kierra Booker, and I am a rising third-year student at Howard University School of Law. I am writing to express my strong interest in a clerkship in your chambers for the upcoming 2024-2025 year or any subsequent term. I want to clerk in your chambers to gain valuable court experience and deepen my understanding of courtroom dynamics from a neutral standpoint. I firmly believe this opportunity will greatly benefit my career as a future litigator. Further, I am confident that my skills and experiences, will make me a valuable addition to your chambers.

During the past semester, I served as a law clerk for Administrative Law Judge Arnette Dorsey at the Equal Employment Opportunity Commission (EEOC). In this role, I provided comprehensive assistance to Judge Dorsey which encompassed various responsibilities such scheduling conferences and hearings, conducting intake on incoming cases, and drafting witness questions for complex proceedings. Notably, I conducted extensive research of relevant case law and skillfully analyzed facts through writing numerous summary judgment decisions and a hearing decision recommendation. I successfully wrote several decisions by the end of my externship, helping Judge Dorsey reach her monthly goal of issuing a specified number of decisions. This experience provided me with invaluable insights into court proceedings and affirmed my passion for pursuing a clerkship.

Throughout my academic and professional journey, I have gained extensive experience in a wide range of legal writing formats including memorandums, motions briefs, and client letters. This diverse exposure has equipped me with comprehensive knowledge and skills in various types of legal writing. I am confident in my ability to effectively communicate complex legal concepts into a clear and concise persuasive written work. Moreover, these skills will continue to develop during my time now as a summer associate at Debevoise and at my judicial internship in the fall.

Enclosed with this letter, you will find my resume, transcript, letters of recommendation, and a writing sample for your review. Should you require any further documentation or information, please do not hesitate to contact me. I am eager to discuss my qualifications and enthusiasm for this position in more detail. Thank you for your time and consideration.

Respectfully Submitted,



Kierra Booker

# Kierra Booker

Washington, DC

kierra.booker@law.bison.howard.edu | (301) 938- 9926

## EDUCATION

Howard University School of Law, Washington, DC

*Juris Doctor*

Expected May 2024

GPA: 87.45

Ranking: Top 20%

Activities: Movement Lawyering Clinic, Child Welfare Clinic, Vice President of American Constitution Society, Thurgood Marshall Academy, HUSL Gospel Choir

Northeastern University, Boston, MA

Graduated May 2021

*Master of Science degree in Criminal Justice**Bachelor of Science degree in Criminal Justice, Minor in American Sign Language*

## EXPERIENCE

Debevoise &amp; Plimpton, New York, NY

May 2023- Present

*Summer Associate*

- Revising a publication on corporate investigations, incorporating recent case law and news coverage
- Conducting in-depth research on case law to bolster a multifaceted compassionate release case
- Drafting informative legal blog posts that focus on client outreach and highlight the essential data security safeguards necessary for businesses

Equal Employment Opportunity Commission, Washington, DC

Jan. 2023 - May 2023

*Extern Law Clerk to Judge Arnette Dorsey*

- Drafted Bench Decisions, Summary Judgment Decisions, Case Management Orders, and Prehearing Conference Orders, improving courtroom efficiency and decision-making
- Assisted during judicial proceedings with notetaking, witness questions, and monitoring the courtroom
- Researched precedent-setting EEOC decisions to inform the Judge during new complex legal issues

Movement Lawyering Clinic, Washington, DC

Aug. 2022 – Dec. 2022

*Student Attorney*

- Organized and led a community roundtable involving over 10 Baltimore City leaders to address the major issues in the community: findings were formally documented and presented at a United Nations Forum
- Facilitated focus groups comprised of students and faculty at a DC high school and used discussions to create a detailed report outlining actionable steps to reduce their school to prison pipeline
- Interviewed individuals convicted of felony murder and authored an article emphasizing Maryland's need for sentencing guideline reform

T. Rowe Price, Owings Mills, MD

June – Aug. 2022

*Legal Intern*

- Developed an extensive repository of state statutes promoting adherence to statutory compliance requirements for investment firms
- Assessed the compliance of trust guidelines with updated company policies for over 15 trusts
- Presented key legal findings on regulatory statutes and organizations promoting outside counsel diversity

## LANGUAGES/ INTERESTS

American Sign Language (Intermediate), aerial yoga, Carnival, and travel

**Howard University**  
Washington, DC 20039

Student No: @03044028

Date Issued: 11-JUN-2023 OFFICIAL

Record of : Kierra E Booker

Current Name: Kierra E Booker

\*\* Warning - No Address \*\*

Issued To : KIERRA ERIKA BOOKER

Course Level : Law

**Current Program**

Degree : Juris Doctor  
Program : Juris Doctor  
College : School of Law  
Campus : West/Law

Subj	No.	C	Title	Cred	Grade	Pts	R
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**INSTITUTION CREDIT:****Fall 2021**

School of Law  
Law  
First-Time Professional

LAW	507	M	Leg. Reg.	3.00	84	252.00	
LAW	617	M	Torts	4.00	87	348.00	
LAW	619	M	Civil Procedure I	4.00	88	352.00	

Earned Hrs	GPA-Hrs	QPts	GPA
11.00	11.00	952.00	86.55

**Spring 2022**

School of Law  
Law  
Continuing

LAW	612	W	Constitutional Law I	3.00	74	222.00	
LAW	613	W	Legal Reasoning Research Writ	4.00	87	348.00	
LAW	614	W	Property	4.00	86	344.00	
LAW	615	M	Contracts	5.00	88	440.00	
LAW	616	W	Criminal Law	3.00	77	231.00	

Earned Hrs	GPA-Hrs	QPts	GPA
19.00	19.00	1585.00	83.42

Good Standing

**Fall 2022**

School of Law  
Law  
Continuing

LAW	551	M	CD: Capital Punishment	2.00	96	192.00	
LAW	621	M	Constitutional Law II	3.00	89	267.00	
LAW	654	M	Legal Writing II	2.00	92	184.00	
LAW	687	W	Professional Responsibility	3.00	92	276.00	
LAW	841	M	CD: Movement Lawyer Clin I Exp	6.00	94	564.00	

Earned Hrs	GPA-Hrs	QPts	GPA
16.00	16.00	1483.00	92.69

Good Standing

**Spring 2023**

School of Law  
Law  
Continuing

LAW	417	W	1st Amend, Civ Rits & Ent law III	2.00	85	170.00	
LAW	574	M	Public Interest Externship	4.00	P	0.00	
LAW	629	W	Evidence	4.00	90	360.00	
LAW	642	W	Criminal Procedure I	3.00	96	288.00	

Subj	No.	C	Title	Cred	Grade	Pts	R
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**INSTITUTION CREDIT:**

LAW	771	M	Commercial Law	3.00	78	234.00	
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Earned Hrs	GPA-Hrs	QPts	GPA
16.00	12.00	1052.00	87.67

Good Standing

**Fall 2021**

LAW	613	M	Legal Reasoning Research Writ	0.00	In Prog	Course	
LAW	615	M	Contracts	0.00	In Prog	Course	

**Fall 2023**

LAW	647	M	Family Law	3.00	In Prog	Course	
LAW	651	M	Wills Trust & Estates	3.00	In Prog	Course	
LAW	851	M	CD: Equal. According to Pauli	3.00	In Prog	Course	
LAW	928	M	Child Welfare/Fam Justice Exp	4.00	In Prog	Course	
LAW	973	M	Housing Discrimination	2.00	In Prog	Course	

Transcript Totals	Earned Hrs	GPA Hrs	Points	GPA
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TOTAL INSTITUTION	62.00	58.00	5072.00	87.45
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TOTAL TRANSFER	0.00	0.00	0.00	0.00
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OVERALL	62.00	58.00	5072.00	87.45
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**END OF TRANSCRIPT**

ETRN

Page 1 of 1

Kimberly Seed

**Registrar**



# GRADING POLICY/GRADE CUT-OFFS

THE CURRENT GRADING POLICY AND GRADE CUT-OFFS FOR THE CLASSES OF 2023 AND 2024 ARE AS FOLLOWS:

OUT OF A SCALE OF 100

## CLASS OF 2023

Class Rank	Cum GPA
Top 10%	89.97-above
Top 15%	88.77-above
Top 25%	86.90-above
Top 33%	85.13-above

## CLASS OF 2024

Class Rank	Cum GPA
Top 10%	88.7-above
Top 15%	87.6-above
Top 25%	86.17-above
Top 33%	84.67-above

## FINAL GRADES SYSTEM

A	90-100
B	80-89
C	70-79
D	60-69
F	50-59

## 4-POINT SCALE CONVERSION

Cum GPA	Standard GPA
90-100	4.0
89-85	3.99 - 3.50
84-80	3.40 - 3.00
79-75	2.99 - 2.50
74-70	2.49 - 2.00
69-65	1.99 - 1.50
64-60	1.49 - 1.00
59-less	.99 - less

A J.D. student will be placed on academic probation if the student has a cumulative weighted grade point average between 72.00 and 74.99 after the end of the first year. A student who is on academic probation after the end of the first year must also participate in the upper-class Academic Support Program. Failure to participate in the Academic Support Program is grounds for dismissal. With the exception of the summer semester, probation shall terminate during the semester in which the student obtains a cumulative GPA of 75.

Re: Letter of Recommendation for Ms. Kierra Booker

Dear Judge,

I am writing this letter in support of Kierra Booker's application for a clerkship in your chambers. For Spring 2023, Kierra served as my extern law clerk at the U.S. Equal Employment Opportunity Commission. Over the past few months, I have learned Kierra's positive demeanor, exceptional drive and work ethic, and task management skills. I am confident that she will be an exceptional clerk.

From Kierra's first day she showed that she was serious about joining the Commission and beginning her assignments. As my law clerk, Kierra helped with day-to-day operations such as scheduling and attending hearing and conferences. She also helped draft orders, write decisions, conduct research, and analyze claims. Through all her assignments, Kierra paid attention to detail and deadlines. She was readily willing to accept feedback and implement changes when needed.

In addition to her work product, Kierra exhibited enthusiasm for learning about employment law and understanding how the Commission works. During our discussions, she brought thoughtful perspective that showed she was thinking critically about the cases and the law. When writing, she worked hard to provide an in-depth analysis in each decision. Kierra took each assignment seriously and was a great assistance to me during her time as my clerk.

I have no doubt that Kierra will excel as she continues in her law school studies and career. I believe the characteristics she showed during her time as my law clerk will aide her in her future endeavors. I highly recommend Kierra to you as I am confident that she will be a great addition to your chambers.

Sincerely,



Arnette Dorsey  
Administrative Judge  
U.S. Equal Employment Opportunity Commission  
Washington Field Office  
Arnette.Dorsey@ecoc.gov  
202-921-2970

**Kayonia L. Whetstone**

Assistant Professor of Lawyering  
Skills

Howard University School of Law  
2900 Van Ness Street, NW  
Washington, DC 20008

Mobile: 917.446.4810  
[kayonia.whetstone@howard.edu](mailto:kayonia.whetstone@howard.edu) |  
[profwhetstone@gmail.com](mailto:profwhetstone@gmail.com)

June 13, 2023

*Via OSCAR*

I am delighted to support Kierra Booker's application for a clerkship with you. I met Kierra nearly two years ago when she arrived for the first day of my first-year legal research and writing class. Getting to know her and assisting in her maturation as a young legal professional has been a pleasure.

First-year legal writing introduces students to the professional skills of legal analysis, writing, and research. In the fall, students prepare three predictive legal memoranda. In the spring, students research and write persuasive trial briefs and do an oral argument. And in the second year, students take a required semester-long appellate advocacy course that broadens their professional skills in legal analysis, writing, research, and oral advocacy. My appellate advocacy students prepare a full appellate brief and video presentation and do an oral argument before a panel of experienced practitioners. In both courses, students conduct extensive in-class exercises, partner work, and conferences with me.

Kierra is a dedicated, thoughtful, and determined student. She came to office hours prepared with pointed questions, demonstrating she had thoughtfully considered the legal conflict and its real-life implications. She was excited to craft compelling arguments to advocate for her client within the bounds of ethics. And in the classroom, Kierra's questions and responses added value to the discussion, revealing her comprehension of the material, preparation for class, and desire to apply the law fairly. Kierra welcomed feedback and used it to improve the quality of her work. Ultimately, in her highly competitive first-year class, Kierra earned a B+ in the course.

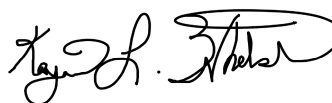
Unsurprisingly, Kierra worked even harder to further hone her persuasive writing skills and learn appellate practice and process in my second-year appellate advocacy course. She demonstrated sharp

oral advocacy skills by thoughtfully weaving emotional and legally significant facts with the law, skillfully using various persuasive tools that demonstrated her ability to think well on her feet to make compelling arguments. Instead of simply rehashing her entire brief for the panel, Kierra focused her argument on addressing potential hurdles the court might have in adopting her rationale and granting her requested relief. And when questioned by the panel, she was poised, showed appropriate deference to the court, and provided well-reasoned arguments that were supported by the law even when responding to tough questions. She also found ways to pivot back to her main point, thus, effectively moving her argument forward. She earned an A- in that course.

Yet, I am most impressed by Kierra's professionalism, passion, and intellectual curiosity. She demonstrates emotional and intellectual intelligence and maturity not found by many of her classmates. When discussing complex criminal procedure issues related to her client's conviction for sex crimes against a minor, Kierra parsed out the legal issues from the very emotional subject matter while zealously advocating for a just result. During our numerous conversations, I have learned about Kierra's interest in criminal justice reform, employment law, and lawyer wellness. I was not surprised when I realized that she holds a master's in criminology, as she can see both sides of an argument and thinks through legal issues with a lens that considers the human lives impacted by the legal conflict. She has sought out and procured internships with at least two judges and been a staff attorney in Howard's Movement Lawyering Clinic. Indeed, Kierra is dedicated to taking advantage of every learning opportunity, especially in positions where she can gain real-world experience that allows her to sharpen her legal skills to help solve litigants' conflicts with care.

Kierra's personality and intellect demonstrate that she can be trusted with any assignment. I would be thrilled to have her as a professional colleague. And I have every belief that she will be an asset to you; therefore, I enthusiastically recommend Kierra for a clerkship in your chambers.

Respectfully submitted,



Kayonia L. Whetstone  
Assistant Professor of Lawyering Skills





June 12, 2023

RE: Recommendation for Kierra Booker

Dear Judge,

I am writing to support Kierra Booker's application for a position as a law clerk in your chambers. Ms. Booker was an exceptional Legal Intern within T. Rowe Price's legal department during the summer of 2022. She reported to me during her internship, and I can attest to her exceptional work ethic and skills. I am confident that she will be an outstanding law clerk.

As an intern, Ms. Booker was assigned to various projects covering different areas of work supported by the department. Her projects included (i) conducting research and analysis on procurement laws of various states in order to provide advice to the firm when entering into investment management agreements with governmental entities; (ii) helping reconcile investment guidelines and offering documents with the overall investment policies of T. Rowe Price; and (iii) helping research outside laws firms in connection with the department's law firm diversity initiatives.

Ms. Booker performed her assignments with great care, independent initiative, and strong collaboration with other members of the department. Of particular note to me was her inquisitive mind and her ability to ask in depth questions about her assignments as well as about the implications around her assignments. She was not satisfied with just doing the work but rather she wanted to understand how her work would have an impact on the firm's business. She took the time to understand her assignments and accordingly had a good understanding of the legal issues and concepts involved, which then translated into detailed work product that provided valuable insights.

Besides her strong analytical legal skills, Ms. Booker also display strong technical ability by consistently meeting her deadlines while handling multiple tasks, including law school-related activities that fell outside her work as an intern. She also demonstrated strong collaboration skills by interacting with other members of the department in a professional manner and with a positive



attitude. Finally, Ms. Booker is a strong public speaker. She did an excellent job presenting at the end of her internship about her summer responsibilities and experience to a large group of members of the legal department (over 30 associates). Following her presentation, I had multiple colleagues reach out to me to let me know how well Ms. Booker had conducted her presentation.

Based on my experience with Ms. Booker and her great performance as an intern at T. Rowe Price, I believe she would be a great addition to your chambers. I highly recommend Ms. Booker for this position and I hope you grant her the opportunity to work with you so she can continue to develop her legal career. Should you have any questions about Ms. Booker's experience at T. Rowe Price, do not hesitate to contact me.

Respectfully,

**Nicolas Lombo**  
**Managing Legal Counsel**  
T. Rowe Price Associates, Inc.  
4515 Painters Mill Road  
Owings Mills, MD 21117  
(410) 345-2380  
E-mail: [nicolas.lombo@troweprice.com](mailto:nicolas.lombo@troweprice.com)



_____	) Case No. 000-2022-12345X
Mr. F.,	) Agency No. DOT2000000000000000
Complainant,	)
	)
v.	)
	)
Pete Buttigieg, Secretary,	)
U.S. Department of Transportation,	)
Agency.	) Date: April 28, 2023
_____	

**EXCERPT FROM DECISION AND ORDER**

The following writing sample represents my work while serving as an extern for a federal agency. I made significant contributions to a Decision and Order Entering Summary Judgment by drafting the Statement of Facts and the analysis within the Grounds for Summary Judgment, with minor edits. For the purposes of this writing sample, all case numbers, names, and private information have been changed to clearly fictional names or have otherwise been modified or redacted. Additionally, the excerpt may not be used for any other purpose than a writing sample for my employment pursuit.

Respectfully submitted,

Kierra Booker

\_\_\_\_\_

## COMPLAINANT'S CLAIMS<sup>2</sup>

Whether Complainant was subjected to discrimination and hostile work environment (non-sexual) based on color (dark brown), disability (mental) by multiple incidents:

1. On or about October 19, 2021, management issued Complainant a one-day suspension;
2. On or about October 19, 2021, a management official told Complainant "I don't pay you supervisors to take breaks or be friends with these people;"
3. On October 28, 2021, a management official told Complainant there was no longer work available for him at DCA;
4. On November 1, 2021, management charged Complainant absence without leave (AWOL) for not attending a virtual training course;
5. On November 22, 2021, a management official asked Complainant about his pending divorce and medical condition;
6. On January 11, 2022, a management official accused Complainant of not completing a work assignment;
7. On February 18, 2022, a management official yelled at Complainant, ordered Complainant to stay in his office, and did not to allow Complainant to file a Notice of Traumatic and Claim for Continuation of Pay/Compensation (CA-1) form or take leave from work;
8. On April 1, 2022, Complainant became aware that management did not select him for a Staff Specialist position under vacancy announcement number ADEABRO0214567; and
9. On April 6, 2022, a management official accused Complainant of stealing her PIV card, harassing others and closed the door in Complainant's face.

## UNDISPUTED MATERIAL FACTS

### Background

1. Complainant, Mr. F, began working for the Federal Aviation Administration (FAA) in 2008, and started working as a Supervisor Air Traffic Control Specialist in September 2019. *See Report of Investigation (ROI)* at 000112.
2. Complainant's job duties include supervising a team of air traffic control specialists. *Id.* at 000234.
3. Complainant alleges discrimination based on his color (dark skin) and his disability (mental, mood and bipolar disorder). *Id.* at 000113.
4. Complainant reported his mental disabilities to Gen X. in the Agency's Medical Office, in June 2020. *Id.*
5. Complainant identifies Ms. TY. (Complainant's first-level supervisor, color-brown, disability- none), Ms. DC (Complainant's second level supervisor for a brief

<sup>2</sup> During the Initial Conference on January 10, 2023, the parties agreed to the claims, and Complainant voluntarily withdrew his reprisal claim. *See CMO* at 2.

period in Fall 2021), Ms. MC (Complainant's current second-level supervisor, color-medium brown, disability status unknown), and Ms. P. Master (Complainant's coworker, color- medium brown, disability) as those he believes discriminated against him. *Id.* at 000033-35, 000113, 000151, 000158, 000180, 000187.

6. RMO TY is aware of Complainant's color and disability because when she started her position August 2021, Complainant was already medically ineligible, unable to maintain his operational certification. *Id.* at 000152.
7. RMO MC is aware of Complainant's color and disability *Id.* at 000212.
8. Ms. P Master is aware of Complainant's color and disability. *Id.* at 000181.
9. Complainant states that he was unable to perform the essential functions of his position with or without a reasonable accommodation as he was medically ineligible in June 2020, and medically disqualified in March 2022. *Id.* at 000113.
10. During the time he was medically ineligible, Complainant performed administrative duties. *Id.*

### Claim 1

11. Around October 2021, an investigation occurred where Complainant acknowledged that he observed his subordinate employees on their cell phones and did not do anything to enforce the Agency's policy. *Id.* at 000114.
12. January 31, 2022, Mr. C. (General Manager, Complainant's fourth-level supervisor, color-white, disability status unknown) issued Complainant a proposal for suspension. *Id.* at 00199, 000267.
13. Complainant did not submit a response to the notice of proposal to suspend. *See id.* at 000115, 000200.
14. On March 8, 2021, Mr. C issued Complainant a decision that Complainant received a one-day suspension. *Id.*
15. The Agency suspended Complainant because he admitted to not following the Agency's no cell phone use policy, and as a supervisor, he is held to a high standard. *Id.* at 000200.
16. Complainant stated that his color and disability were not applicable to this claim, and that he believed Mr. Team Mate (White) received harsher discipline than he did. *Id.* at 000115.

### Claim 2

17. On or about October 19, 2021, Deputy Vice-President, HF, held an all-hands management meeting. *Id.* at 000116, 000223.
18. During the meeting RMO HF spoke with all supervisors as a group about the Agency's policy against letting employees use cell phones, expressing her disappointment regarding the findings of the investigation and that allowing cell phone use was inappropriate. *Id.* at 000223; *see also* 000115.

### Claim 3

19. In June 2020, after being declared medically ineligible, Complainant performed administrative duties at DCA. *Id.* at 000116.
20. On October 28, 2021, RMO TY informed Complainant that there was no longer [administrative] work for him available at DCA. *Id.* at 000116, 000153.

**Claim 4**

21. On November 1, 2021, Complainant did not attend the first day of a required Labor Management Relations (LMR) training course. *Id.* at 000117, 000154.
22. On November 1, 2021, Complainant was marked AWOL for 8 hours after not showing up for training as he was not on approved leave. *Id.* at 000154, 00214.
23. Complainant was aware that he was required to attend the training in person because he spoke to management the Thursday prior to the training. *See id.* at 000117
24. When filing the formal complaint, Complainant states that he discussed the option to take the training at home, which management denied, and he did not attend the training due to his childcare issues. *Id.* at 000033.

**Claim 5**

25. On November 22, 2021, Complainant and RMO C. met and Mr. C. asked Complainant “if you don’t mind me asking, what is going on?” *Id.* at 000118, 000215.
26. Complainant states he proceeded to tell Mr. C. about his medical condition. *Id.* at 000118.

**Claim 6**

27. On January 11, 2022, P. Master informed Complainant that he had not completed a training report. *Id.* at 000183.
28. On January 11, 2022, Complainant informed P. Master that he had not missed the deadline because he had until midnight to complete the training, not close of business. *Id.* at 000120, 000183.
29. P. Master sent emails related to tasks and deadlines. *Id.* 0001119. She expected that tasks for those who do administrative work would be complete during working hours, up until 6:00 pm. *See id.* at 000183.

**Claim 7**

30. On February 18, 2022, Complainant entered Mr. C's office to inform him he had filled out a Notice of Traumatic and Claim for Continuation of Pay/Compensation (CA-1) form and needed to leave work. *Id.* at 000120, 000216.
31. Mr. C. asked Complainant why he filled out the form and Complainant did not answer and started to leave. *Id.* at 000120, 000216.
32. Mr. C. gave complainant a direct order to not leave his office and informed Complainant that disciplinary action may be taken against him if he did. *Id.* at 000120, 000216.

**Claim 8**

33. On January 1, 2022, Complainant applied for Staff Specialist Position (location) under vacancy announcement ADEABRO0214567. *Id.* at 000317.

34. On January 26, 2022, TMZ (selecting official, color-white, disability-none) selected Complainant as the first choice for the position, despite being aware that Complainant was Black and medically incapacitated from operational duties. *Id.* at 000206-07.
35. On April 5, 2022, Complainant informed TMZ that he could not be released from his current position. *Id.*
36. After hearing from Complainant, TMZ notified the district office to proceed with the second choice for the position, Mr. V. (color-white, disability-medically incapacitated). *Id.*
37. Complainant believed Mr. Rough (White/Caucasian, disability) was selected. *Id.* at 000122.
38. The Agency did not finalize a selection for the vacancy announcement. *See id.*
39. The investigator afforded Complainant the opportunity to rebut affidavit testimony, and Complainant did not rebut any of TMZ's testimony. *See id.* at 000128-29.

### Claim 9

40. On April 6, 2022, P. Master told Complainant, "it seems you are harassing Connie with constant emails." *Id.* at 000123, 000184.
41. On April 6, 2022, P. Master and Complainant discussed whether Complainant had seen her PIV card as Ms. P. Master felt she was with Complainant when she saw it last. *Id.* at 000123, 000228.

## APPLICABLE LAW

### A. Legal Standard for Disparate Treatment Claims

In absence of direct evidence of discrimination, to establish a *prima facie* case of disparate treatment, the complainant must show: (i) he is a member of a protected class; (ii) he was subjected to an adverse employment action by the Agency concerning a term, condition, or privilege of employment; and (iii) he was treated differently than similarly situated employees outside his protected class, or there is some other evidentiary link between membership in the protected class and the adverse employment action. *McCreary v. Dep't of Defense*, EEOC Appeal No. 0120070257 (Apr. 14, 2008); *Saenz v. Dep't of the Navy*, EEOC Request No. 05950927 (Jan. 9, 1998). Even if Complainant fails to establish a specific element of a *prima facie* case, this failure "may be overcome if [complainant] sets forth some evidence of agency actions from which, if otherwise unexplained, an inference of discrimination can be drawn." *Robinson v. Postmaster Gen.*, 01934794, 4200/E3 (1994). Once the complainant establishes a *prima facie* case, the burden shifts to the Agency to demonstrate a legitimate non-discriminatory reason for its action. The burden then shifts back to the complainant to demonstrate the Agency's reason is pretext. *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). This can be done by showing the Agency's reason is unworthy of credence, or by proof that a discriminatory reason more likely motivated the agency. *Texas Dep't. of Comty. Affairs v. Burdine*, 450 U.S. 248, 256 (1981).

Pretext requires more than a belief, assertion, or suspicion that the Agency was motivated by discrimination or retaliation. *Kathy D. v. Envtl. Prot. Agency*, EEOC Appeal No. 0120171318 at p.5 (Aug. 14, 2018); *Vickey S. U.S. Postal Serv.*, EEOC Appeal No. 0120171004 (July 12, 2018); *Letty K. v. Dep't of Veterans Affairs*, EEOC Appeal No. 2019003570 (Feb. 21, 2020) ("Beyond her own

subjective beliefs, Complainant produced no evidence that her race, color, sex or retaliatory animus played any role in the move to terminate her during her probationary period” and summary judgment was therefore appropriate). Importantly, a complainant’s subjective belief that discrimination occurred is insufficient to prevent summary judgment for the agency. *See Cardwell v. Social Sec. Admin.*, EEOC Appeal No. 01A05861 (Nov. 2, 2001) (“Complainant’s subjective beliefs are insufficient to establish discrimination.”); *Kennedy v. Dep’t of Transp.*, EEOC Appeal No. 0120111520 (May 24, 2012) (bare assertions and subjective belief insufficient to establish that agency acted because of complainant’s sex); *Haydee A. v. Dep’t of Justice*, EEOC Appeal No. 0120161735 (Sept. 20, 2017) (“Complainant’s subjective belief that she has been the victim of discrimination is not evidence of discriminatory intent and is not sufficient to survive a motion for summary judgment.”).

### **B. Non-Selection Claims**

To establish a *prima facie* case of non-selection, Complainant must show: 1) he is a member of a protected class; 2) he applied and was qualified for the position at issue; 3) he was not selected for the position; and 4) an individual outside Complainant’s protected class was selected. *Weinstein v. USPS*, 01830674, 1056/F14 (1983). However, the real bottom line is that, in accordance with *McDonnell Douglas v. Green*, 411 U.S. 792 (1973), a *prima facie* case of discrimination in selections or promotions consists of facts which, if otherwise unexplained, could lead one reasonably to conclude that the action was based on discriminatory motives. Once Complainant establishes a *prima facie* case, the burden shifts to the Agency to demonstrate a legitimate non-discriminatory reason for its action. The burden then shifts back to Complainant to demonstrate the Agency’s reason is pretext. This can be done by showing the Agency’s reason is unworthy of credence, or by proof that a discriminatory reason more likely motivated the Agency. *Burdine*, 450 U.S. at 256. For non-selection cases, Complainant may also establish pretext by demonstrating that his or her qualifications were observably or plainly superior to those of the successful candidate. *Bauer v. Bailer*, 647 F.2d. 1037, 1048 (10th Cir. 1981).

### **C. Disability Discrimination**

A Complainant must establish: (1) he is disabled as defined by statute; (2) he was a "qualified individual" during the relevant time, meaning he could perform the essential functions of the job in question with or without reasonable accommodations; and (3) he was discriminated against because of his disability. *See* 29 C.F.R. § 1630.2(g); 29 U.S.C. 791(g); *Arnold v. U.S. Dep’t of Interior*, 213 F.3d 193 (5th Cir. 2000). Establishing a disability under the Rehabilitation Act requires: 1) a physical or mental impairment that substantially limits one or more major life activities; 2) a record of such an impairment; or 3) being regarded as having such an impairment. *See* 42 U.S.C. § 12102. Major life activities include functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. *See* 29 C.F.R. § 1630.2(i). “An impairment is a disability within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population.” *See* 29 C.F.R. § 1630.2(j)(1)(ii).

An employer unlawfully discriminates against a qualified individual with a disability when the employer fails to provide a “reasonable accommodation” for the disability, unless doing so would impose undue hardship on the employer. An accommodation can qualify as “reasonable,” and thus



be required by the ADA or Rehabilitation Act, only if it enables the employee to perform the essential functions of the job. 42 U.S.C.S. § 12112 (b) (5) (A); 29 C.F.R. § 1630.9(a).

The Commission has held that an Agency violates the Rehabilitation Act when it causes an unnecessary delay in responding to a request for accommodation. The Commission has held that failure to respond to a request for accommodation in a timely manner may result in a finding of discrimination. *See Denese G. v. Dep't of the Treas.*, EEOC Appeal No. 0120141118 (Dec. 29, 2016). In determining whether there was an unnecessary delay, we are to consider (1) the reasons for the delay; (2) the length of the delay; (3) how much the individual with a disability and the employer each contributed to the delay; (4) what the employer was doing during the delay, and (5) whether the required accommodation was simple or complex to provide. EEOC, Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act at Question 10, n.38 (Oct. 17, 2002).

#### **D. Harassment/Hostile Work Environment**

To establish a claim of hostile work environment (harassment), a complainant must show: (1) he belongs to a statutorily protected class (or classes); (2) he was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on the statutorily protected class(es); (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. *See Henson v. City of Dundee*, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been "sufficiently severe or pervasive to alter the conditions of [Complainant's] employment and create an abusive working environment." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993).

To prevail on a harassment claim, a complainant must establish he was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in complainant's position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of his protected basis. Complainant can prevail only by establishing both of those elements – hostility and motive. *Ying B. v. Dep't of Veterans Affairs*, EEOC Appeal No. 0120161425 (Mar. 23, 2018).

#### **E. Standard for Issuing Decision Without a Hearing (Summary Judgment)**

The EEOC's regulations on summary judgment are patterned after Rule 56 of the Federal Rules of Civil Procedure, which provides that a moving party is entitled to summary judgment if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. The EEOC Administrative Judge may also issue summary judgment on his/her own initiative, pursuant to 29 C.F.R. § 1614.109(g)(3) in favor of a party. There is no genuine issue of material fact where the relevant evidence in the record, taken as a whole, indicates that a reasonable fact finder could not return a verdict for the opposing or non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986). Where the evidence is merely colorable or is not significantly probative, summary judgment may be granted. *Anderson*, 477 U.S. at 249-250. Summary judgment is also appropriate where the party opposing summary judgment fails to establish a genuine issue of fact on an element

essential to that party's case and on which the party bears the burden of proof. *Celotex Corp. v. Catrell*, 477 U.S. 317, 322-323 (1986).

When opposing summary judgment, a party must respond with specific facts showing that there is a genuine dispute as to a material fact and that the other party is not entitled to judgment as a matter of law. *Anderson*, at 250. If a party opposes summary judgment, they may not rely on mere allegations, speculation, conclusory statements or denials. The party should cite to specific evidence contained in the report of investigation (ROI) which creates a factual dispute regarding a material issue in the case. If not already contained in the ROI, the party should also include any relevant documentary evidence or witness statements, interrogatory answers, admissions or other supporting materials and provide a clear and specific statement of their relevance. Where information is compiled from agency records, provide a declaration from the person preparing the evidence as to the method used to prepare it.

Unless a party demonstrates that there is a genuine issue of material fact in dispute, no hearing will be held. Therefore, if the party plans to call witnesses to testify in support of claims or defenses, the party should obtain written statements from them, and submit these statements in support of the argument against summary judgment. *Petty v. Defense*, EEOC Appeal No. 01A24206 (July 11, 2003), *Murphy v. Army*, EEOC Appeal No. 01A04099 (July 11, 2003).

### GROUNDS FOR SUMMARY JUDGMENT

***Complainant Fails to Prove Prima Facie Case Based on Color.*** Complainant has proved that he is a member of a protected class (color-dark brown), and that he suffered an adverse employment action (one-day suspension, absence without leave (AWOL), and non-selection). See ROI at 000113, 000154, 000209, 001200. However, Complainant has not shown a nexus between his protected class and the adverse employment action. Regarding the one-day suspension, Complainant admits that he believed one employee, Team Mate (White) received more harsh punishment than Complainant. *Id.* at 000115. This would contradict his allegation that he was treated less favorably because he was dark brown. Complainant offers no direct evidence of color discrimination, nor any evidence for which an inference of discrimination could be drawn. Moreover, when asked why he believed the Agency's actions were based on his color Complainant stated "not applicable" for all his claims regarding the discrete acts. See ROI at 000115, 000117, 000122. Therefore, Complainant cannot establish a *prima facie* case of color discrimination, and the Agency is entitled to judgment as a matter of law.

***Complainant Fails to Prove Prima Facie Case Based on Disability.*** Complainant is an individual with a disability (mental, mood and bipolar disorder).<sup>3</sup> However, Complainant offers no nexus between his disability and the Agency's actions. When asked how the Agency's adverse actions relate to his disability Complainant states "not applicable" for all claims except Claim 8 (non-selection). See ROI at 000115, 000118. Regarding Claim 8, Complainant states the non-selection related to his

<sup>3</sup> Complainant was not a qualified individual during the entire course of these claims, See ROI at 000113. He also does not have a failure to accommodate claim. See CMO and ROI at 27 (formal complaint). Complainant states that he was unable to perform the essential functions of his position with or without a reasonable accommodation as he was medically ineligible in June 2020, and medically disqualified in March 2022. *Id.* at 000113. Thus, during the timeframe starting on June 2020, Complainant was performing administrative duties. *Id.* The selecting official stated that he was aware of Complainant's status of medical ineligibility, but he did not know Complainant's specific disability. *Id.* at 206.

disability because “I know I have rubbed people the wrong way.” *Id.* at 000122. Complainant’s bare assertions do not suffice to establish disability discrimination. Moreover, Complainant believed that Mr. Rough was selected, who he also states has a disability. *Id.* Additionally, the selecting official was aware that Complainant was an individual with a disability, and still selected him as the first choice for the position in Philadelphia. *Id.* at 207. This contradicts the notion that the Agency did not select Complainant because of his disability. As Complainant failed to establish a *prima facie* case, the Agency is entitled to judgment as a matter of law.

***Complainant Cannot Prove Pretext.*** Even if *arguendo*, the Complainant could present a *prima facie* case, the Administrative Judge need not address whether a complainant has established the *prima facie* elements of a claim when the Agency has articulated a legitimate, nondiscriminatory reason for its actions. The factual inquiry can proceed directly to the third step of the analysis -whether complainant has shown by a preponderance of the evidence that the Agency’s actions were pretext, and ultimately, whether the Agency was motivated by discrimination. See *U.S. Postal Serv. Bd. of Gov. v. Aikens*, 460 U.S. 711, 713-714 (1983); *Hernandez v. Dep’t of Transp.*, EEOC Request No. 05900159 (June 28, 1990). Therefore, the undersigned will assume, without finding, that Complainant has established a *prima facie* case based on color and disability.

The Agency has articulated legitimate nondiscriminatory reasons for its decisions. For Claim 1, the Agency suspended Complainant for one (1) day because he did not enforce the Agency’s “no cell phone policy” in the control tower. Complainant admitted “I had seen controllers on the phone, and I did not do anything.” See ROI at 000114. RMO Mr. C. supports this assertion stating that when Complainant spoke with investigators, he told them “... I do not enforce the no phone policy. The reason I do not enforce this policy is it would make my life hard/miserable.” *Id.* at 000200. The Agency conducted a FAA security investigation finding violations of the policy, and RMO Mr. C. articulated that in consultation with Labor Relations, the one-day suspension was warranted because Complainant was a supervisor and held to a higher standard to follow/enforce policy. See *id.*

Regarding Claim 4, Complainant acknowledges that the training course was required by management and that management informed him that he had to report to the facility to attend the training.<sup>4</sup> *Id.* at 000117, 000155. As Complainant did not report to work for the first day of training, nor did he have approved leave, he was charged AWOL. *Id.* at 000214.

Regarding Claim 8, Complainant claims that he was not selected for the Staff Specialist position, however, the selecting Official Mr. TMZ testified that Complainant was the first choice. *Id.* at 000207. A referral list shows Mr. TMZ’s dated signature and the word “appointed” next to Complainant and his second choice, Mr. V., who Mr. TMZ. also identifies as having a medical incapacitation. *Id.* At 284-5. Regardless of whether Complainant was selected for the position, Complainant states that he has equal qualifications to Mr. Rough, the person he believed was selected. *Id.* at 000122. Thus, even if Mr. Rough was selected, Complainant would not be able to prove he was plainly superior. Ultimately Mr. TMZ testified that the Agency did not make a selection from that bid. *Id.* at 207. Complainant had the opportunity to rebut Mr. TMZ’s testimony, but he did not. *Id.* at 000128-29.

<sup>4</sup> Complainant disagreed with this decision because the training was via Zoom, and he had childcare issues. See ROI at 000033. However, other individuals who asked to take the training from home received the same decision. *Id.* 000155.

Complainant has not presented any evidence that the Agency's legitimate business reasons are false. In fact, Complainant did not respond to the Agency's Motion to present any dispute of material fact. To demonstrate pretext, a complainant must show "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the [Agency's] proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence." *Zamora v. Dep't of the Air Force*, EEOC Appeal No. 0120053351 (Feb. 23, 2007). Just the opposite, the Agency's decisions regarding the suspension, AWOL, and non-selection allegations are consistent and plausible as demonstrated evidence in the record. Pretext requires more than a belief, assertion, or suspicion that the Agency was motivated by discrimination or retaliation. *Kathy D. v. Envtl. Prot. Agency*, EEOC Appeal No. 0120171318 at p.5 (Aug. 14, 2019); *Vickey S. v. U.S. Postal Serv.*, EEOC Appeal No. 0120171004 (July 12, 2018); *Letty K. v. Dep't of Veterans Affairs*, EEOC Appeal No. 2019003570 (Feb. 21, 2020) ("Beyond her own subjective beliefs, Complainant produced no evidence that her race, color, sex or retaliatory animus played any role in the move to terminate her during her probationary period" and summary judgment was therefore appropriate.). Importantly, a complainant's subjective belief that discrimination occurred is insufficient to prevent summary judgment for the agency. *See Cardwell v. Soc. Sec. Admin.*, EEOC Appeal No. 01A05861 (Nov. 2, 2001) ("Complainant's subjective beliefs are insufficient to establish discrimination."); *Kennedy v. Dep't of Transp.*, EEOC Appeal No. 0120111520 (May 24, 2012) (bare assertions and subjective belief insufficient to establish that agency acted because of complainant's sex); *Haydee A. v. Dep't of Justice*, EEOC Appeal No. 0120161735 (Sept. 20, 2017) ("Complainant's subjective belief that she has been the victim of discrimination is not evidence of discriminatory intent and is not sufficient to survive a motion for summary judgment.").

Importantly, a complainant **cannot** establish pretext simply by arguing that the Agency's actions were unwise or unfair. *Complainant v. Gen. Servs. Admin.*, EEOC Appeal No. 0120133398 at p.6 (Sept. 3, 2015). While Complainant may have felt the suspension, onsite training decision/AWOL charge, and non-selection were unfair, the Agency, as the employer, has broad discretion to carry out personnel decisions, absent evidence of unlawful motivation. *Laurice S. v. Soc. Sec. Admin.*, EEOC Appeal No. 0120180646 (June 21, 2019). "In other words, this Commission 'does not second-guess the business judgment of Agency officials regarding personnel decisions **without a demonstrably discriminatory motive.**'" *Laurice S.*, *supra* (quoting *Camden v. Dep't of Justice*, EEOC Appeal No. 0120093506 (Jul. 27, 2012) (emphasis added); *see also Moore v. Soc. Sec. Admin.*, EEOC Appeal No. 01A44666 at p.2 (Sept. 29, 2005) (the Commission is not a "super-personnel department" and cannot simply second-guess the legitimate personnel decisions of federal agencies). As the Complainant has presented no evidence of pretext, the Agency is entitled to summary judgment as a matter of law.

**Complainant Allegations do not Rise to Hostile Work Environment.** If Complainant fails to raise a genuine issue of material fact as to the existence of discriminatory intent on the part of management, "no further inquiry would be necessary as to whether the incidents complained of are severe or pervasive to rise to the level of harassment or constitute separate acts of discrimination under disparate treatment theory. *Nicki D. v. Dep't of Veterans Affairs*, EEOC Appeal No. 0120133247 (Oct. 15, 2015). As fully articulated above, Complainant has not met a *prima facie* case of discrimination based on his protected class, and thus, also cannot meet the burden for harassment/hostile work environment.

Even if Complainant met his burden of showing discrimination based on his protected class, the conduct alleged does not rise to the level of severe or pervasive. The Commission has held that discrete acts (*i.e.*, the one-day suspension, absence without leave, and non-selection) are not part of a hostile work environment claim unless accompanied by abusive conduct or language. *See Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002); *Rotarius v. Dep't of the Treasury*, EEOC Appeal No. 01A45118 (Mar. 29, 2006). Complainant failed to present any evidence that the discrete acts alleged were accompanied by abusive conduct or language. Instead, Complainant's allegations are analogous to typical "tribulations of the workplace" that the Supreme Court specifically found not to state a claim of a hostile work environment. *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Savard v. Dep't of Justice*, EEOC Appeal No. 01A14612 (Dec. 23, 2002).

Viewed as a whole, Complainant cannot prove harassment because he does not establish a nexus to his protected classes, and the allegations (Claims 1-9) do not rise to the level of severe or pervasive. Complainant's harassment claims include alleged actions such as: management accusing him of not completing an assignment on time (close of business vs. midnight); management mentioning his divorce and asking if he minds sharing what was going on<sup>5</sup>; a coworker accusing him of stealing a PIV card; and management ordering him to stay in the office. These allegations are not discriminatory harassment, but rather petty annoyances. Incidents that are "nothing more" than "personality conflicts, general workplace disputes, trivial slights and petty annoyances between" a complainant and his supervisors and/or co-workers that are simply inherent in the workplace "do not rise to the level of severe or pervasive conduct." *Lassiter v. Dep't of the Army*, EEOC Appeal No. 0120122332 (Oct. 10, 2012). *See also William G. v. Dep't of Veterans Affairs*, EEOC Appeal No. 0120162273 (Sept. 26, 2018); *Irvin M. v. Dep't of State*, EEOC Appeal No. 0120161859 (Sept. 11, 2018); *Wilbert W. v. U.S. Postal Serv.*, EEOC Appeal No. 0120162620 (Sept. 6, 2018); *see also Moira R. v. Dep't of Veterans Affairs*, EEOC Appeal No. 0120173036 (Oct. 4, 2018) ("rude tones, smirks, 'dirty' looks," disputes over duties insufficient to establish fourth element of harassment claim); *Sacha K. v. U.S. Postal Serv.*, EEOC Appeal No. 0120172107 (Nov. 2, 2018) (being called a "punk," being called "whiney," being watched by a supervisor while working, and being required to delay breaks insufficient). Therefore, the Agency is entitled to judgment as a matter of law.

### CONCLUSION

For the foregoing reasons, I hereby enter summary judgment in favor of the Agency on all claims pursuant to 29 C.F.R. §1614.109(g). There is no finding of discrimination or harassment.

**It is SO ORDERED.**

For the Commission:

\_\_\_\_\_  
Administrative Judge

<sup>5</sup> Complainant admits that he chose to discuss his medical condition. ROI at 000118.

## Applicant Details

First Name	Tom
Last Name	Boss
Citizenship Status	U. S. Citizen
Email Address	<a href="mailto:boss.t24@law.wlu.edu">boss.t24@law.wlu.edu</a>
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Contact Phone Number	2077458510

## Applicant Education

BA/BS From	The University of Leiden, Netherlands
Date of BA/BS	September 2021
JD/LLB From	Washington and Lee University School of Law
	<a href="http://www.law.wlu.edu">http://www.law.wlu.edu</a>
Date of JD/LLB	May 10, 2024
Class Rank	5%
Law Review/Journal	Yes
Journal(s)	Washington and Lee Law Review
Moot Court Experience	Yes
Moot Court Name(s)	John W. Davis Moot Court Competition

## Bar Admission

## Prior Judicial Experience

Judicial Internships/ Externships	<b>Yes</b>
Post-graduate Judicial Law Clerk	<b>No</b>

### **Specialized Work Experience**

Specialized Work Experience	<b>Appellate</b>
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### **Recommenders**

Murchison, Brian  
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540-458-8511

Hasbrouck, Brandon  
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Fairfield, Joshua  
fairfieldj@wlu.edu  
540-458-8529

**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

TOM BOSS  
208 North Lewis Street, Lexington, VA 24450  
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June 12, 2023

The Honorable Jamar K. Walker  
United States District Court for the Eastern District of Virginia  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third year law student at Washington and Lee University School of Law applying for the term clerkship for 2024–2025 in your chambers. I have been acting as research assistant to Professor Brandon Hasbrouck for about a year and he strongly recommended that I apply to your chambers. Having written on various issues regarding diversity and race on the federal bench for Professor Hasbrouck, I have a keen interest in working for a judge who exemplifies how a diverse background can be beneficial to the judiciary. I also spent part of last summer in the Tidewater area working with Chief Justice Bernard Goodwyn on the Supreme Court of Virginia and would be very happy to return to the area. As a result, I know that I would enjoy and benefit greatly from working in your chambers.

I believe my strong work ethic, refined research and writing skills, and diversity of experience will make me an asset to your chambers. My work ethic is evident not only from my academic success, but also from my experiences balancing research assistant work with success in both internal and external moot court competitions, being selected as a finalist or winner in both oral advocacy and brief writing. Building on my foundational academic success at Washington & Lee, my judicial internship experiences have provided me many opportunities to hone my legal writing and research abilities. As a legal intern for Chief Justice S. Bernard Goodwyn on the Virginia Supreme Court, I wrote multiple bench and writ memoranda on a variety of topics including attorney professionalism, contracts, federal preemption, and criminal law. I received substantive feedback on these memoranda from both Chief Justice Goodwyn and his law clerks, which allowed me to improve when I transitioned to Judge Fred Gore's chambers. My time at Williams & Connolly has allowed me to put these research and writing skills into actual practice with real clients, in both the civil and criminal contexts. Working on these cases has also allowed me to explore the persuasive side of legal writing. Finally, my ample international experience as a professional dancer and student in Europe has given me a unique perspective few others have. By working on teams with diverse cultural and linguistic backgrounds, I have become proficient in analyzing multiple sides of an issue and understanding the competing interests that may be involved. These experiences have also helped me adapt to new environments, which would allow me to quickly integrate with the current team in your chambers.

I have further enclosed my resume for your review, and I am available for either an in-person or virtual interview. I look forward to hearing from you soon and thank you for considering me for this position.

Sincerely,

Tom Boss

Enclosure



## Tom Boss

208 North Lewis Street, Lexington, VA 24450 · (207) 745-8510 · boss.t24@law.wlu.edu

### EDUCATION

#### Washington and Lee School of Law

Juris Doctor Candidate (GPA: 3.839, Top 5%)

Lexington, VA  
May 2024

Activities: *Washington and Lee Law Review*, Executive Editor  
Moot Court Executive Board, Moot Court Competition Chair  
Research Assistant, Professor Brandon Hasbrouck

Competitions: John W. Davis Moot Court Competition (2022) — Oral Advocacy Winner, Best Brief Finalist  
Thurgood Marshall Moot Court Competition, Mid-Atlantic Black Law Students Association (2023) — Best Oral Advocate, Best Respondent Brief  
Thurgood Marshall Moot Court Competition, National Black Law Students Association (2023) — Best Respondent Brief  
Constance Baker Motley Mock Trial Competition, Mid-Atlantic Black Law Students Association (2022) — Mock Trial Runner Up

Publications: *Federal Common Law, Climate Torts, and Preclusion*, 81 WASH. & LEE L. REV. ONLINE (forthcoming 2023)

#### Universiteit Leiden

Bachelor of Arts in International Studies

The Hague, NL  
September 2021

Activities: “Tackling Global Challenges” Honors Certification  
Specialization in the East Asian Region, Japanese language focus  
Faculty-Student Community Building Team Member

### PROFESSIONAL EXPERIENCE

#### Williams & Connolly LLP

Summer Associate

Washington, DC  
May – August 2023

- Researched and wrote memoranda discussing scheme liability and other securities claims for use in supporting a motion to dismiss
- Provided research regarding statutory interpretation for use in a Third Circuit rehearing *en banc*

#### Court of Appeals of North Carolina – Judge Fred Gore

Judicial Intern

Raleigh, NC  
July – August 2022

- Submitted bench memoranda and aided in drafting opinions for Judge Gore

#### Supreme Court of Virginia – Chief Justice S. Bernard Goodwyn

Judicial Intern

Chesapeake, VA  
May – June 2022

- Conducted research on various areas including property, attorney misconduct, and federal preemption
- Submitted bench and writ memoranda that were incorporated into the Chief Justice’s opinions

#### Amnesty International

Academic Consultant

The Hague, NL  
February – May 2021

- Advised media campaigns on the creation of refugee-centric narratives, creating tangible campaign strategies

#### EnableMe Kenya

Digital Solutions Intern

The Hague, NL  
October – May 2021

- Generated a database containing available applications benefiting people with physical, mental, and other disabilities
- Published digital solution articles describing the benefits and availability of these applications for users to access

#### Grote Markt Den Haag

Bartender, Waiter, Busser

The Hague, NL  
June 2019 – June 2021

- Worked in a team with diverse national backgrounds and languages to facilitate day-to-day and special event services

#### The Young Americans

Cast Member, Stage Manager

Corona, CA  
August 2015 – August 2018

- Performed and taught in over 200 shows and workshops in the United States, Japan, and Europe
- Directed stage, lighting, and sound production and collaborated with local staff to arrange the Japan Summer Tour

### LANGUAGES AND INTERESTS

Languages: Fluent in Hebrew, Advanced in Japanese, Intermediate in Dutch

Interests: Scuba Diving, Ice Hockey, Ballet, Classical Music, Musical Theater, Board Games, Crosswords

Print Date: 06/02/2023

Page: 1 of 2

Student: Tom Boss

WASHINGTON AND LEE  
UNIVERSITY

Lexington, Virginia 24450-2116



SSN: XXX-XX-9261

Entry Date: 08/30/2021

Date of Birth: 08/11/XXXX

Academic Level: Law

**2021-2022 Law Fall**

08/30/2021 - 12/18/2021

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 109	CIVIL PROCEDURE	A	4.00	4.00	16.00	
LAW 140	CONTRACTS	A	4.00	4.00	16.00	
LAW 163	LEGAL RESEARCH	B+	0.50	0.50	1.67	
LAW 165	LEGAL WRITING I	B	2.00	2.00	6.00	
LAW 190	TORTS	A	4.00	4.00	16.00	

Term GPA: 3.838

Totals:

14.50

14.50

55.67

Cumulative GPA: 3.838

Totals:

14.50

14.50

55.67

**2021-2022 Law Spring**

01/10/2022 - 04/29/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 130	CONSTITUTIONAL LAW	A	4.00	4.00	16.00	
LAW 150	CRIMINAL LAW	A	3.00	3.00	12.00	
LAW 163	LEGAL RESEARCH	B+	0.50	0.50	1.67	
LAW 166	LEGAL WRITING II	A-	2.00	2.00	7.34	
LAW 179	PROPERTY	A	4.00	4.00	16.00	
LAW 195	TRANSNATIONAL LAW	A	3.00	3.00	12.00	

Term GPA: 3.939

Totals:

16.50

16.50

65.01

Cumulative GPA: 3.892

Totals:

31.00

31.00

120.67

**2022-2023 Law Fall**

08/29/2022 - 12/19/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 685	Evidence	A	3.00	3.00	12.00	
LAW 733	Criminal Procedure: Investigation	A	3.00	3.00	12.00	
LAW 771	National Security Law and Practice	A-	2.00	2.00	7.34	
LAW 829	Civil Litigation Practicum	A	5.00	5.00	20.00	
LAW 911	Law Review: 2L	CR	2.00	2.00	0.00	

Term GPA: 3.949

Totals:

15.00

15.00

51.34

Cumulative GPA: 3.909

Totals:

46.00

46.00

172.01

Print Date: 06/02/2023

Page: 2 of 2

Student: Tom Boss

WASHINGTON AND LEE  
UNIVERSITY

Lexington, Virginia 24450-2116



**2022-2023 Law Spring**

01/09/2023 - 04/28/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 690	Professional Responsibility	B+	3.00	3.00	9.99	
LAW 701	Administrative Law	A-	3.00	3.00	11.01	
LAW 815	Rights of Prisoners Practicum	A-	3.00	3.00	11.01	
LAW 828	Trial Advocacy Practicum	A-	3.00	3.00	11.01	
LAW 911	Law Review: 2L	CR	2.00	2.00	0.00	

**Term GPA: 3.585**

**Totals:**

14.00

14.00

43.02

**Cumulative GPA: 3.839**

**Totals:**

60.00

60.00

215.03

**2023-2024 Law Fall**

08/28/2023 - 12/18/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 700	Federal Jurisdiction and Procedure		3.00	0.00	0.00	
LAW 707B	Skills Immersion: Business		2.00	0.00	0.00	
LAW 713	Sales		3.00	0.00	0.00	
LAW 811	Appellate Advocacy Practicum		4.00	0.00	0.00	

**Term GPA: 0.000**

**Totals:**

12.00

0.00

0.00

**Cumulative GPA: 3.839**

**Totals:**

60.00

60.00

215.03

Law Totals	Credit Att	Credit Earn	Cumulative GPA
Washington & Lee:	60.00	60.00	3.839
External:	0.00	0.00	
Overall:	60.00	60.00	3.839

**Program:** Law

**End of Official Transcript**

## WASHINGTON AND LEE UNIVERSITY TRANSCRIPT KEY

Founded in 1749 as Augusta Academy, the University has been named, successively, Liberty Hall (1776), Liberty Hall Academy (1782), Washington Academy (1796), Washington College (1813), and The Washington and Lee University (1871). W&L has enjoyed continual accreditation by or membership in the following since the indicated year: The Commission on Colleges of the Southern Association of Colleges and Schools (1895); the Association of American Law Schools (1920); the American Bar Association Council on Legal Education (1923); the Association to Advance Collegiate Schools of Business (1927); the American Chemical Society (1941); the Accrediting Council for Education in Journalism and Mass Communications (1948), and Teacher Education Accreditation Council (2012).

The **basic unit of credit** for the College, the Williams School of Commerce, Economics and Politics, and the School of Law is equivalent to a semester hour.

The **undergraduate calendar** consists of three terms. From 1970-2009: 12 weeks, 12 weeks, and 6 weeks of instructional time, plus exams, from September to June. From 2009 to present: 12 weeks, 12 weeks, and 4 weeks, September to May.

The **law school calendar** consists of two 14-week semesters beginning in August and ending in May.

**Official transcripts**, printed on blue and white safety paper and bearing the University seal and the University Registrar's signature, are sent directly to individuals, schools or organizations upon the written request of the student or alumnus/a. Those issued directly to the individual involved are stamped "Issued to Student" in red ink. ***In accordance with The Family Educational Rights and Privacy Act of 1974, as amended, the information in this transcript is released on the condition that you permit no third-party access to it without the written consent from the individual whose record it is. If you cannot comply, please return this record.***

### Undergraduate

**Degrees awarded:** Bachelor of Arts in the College (BA); Bachelor of Arts in the Williams School of Commerce, Economics and Politics (BAC); Bachelor of Science (BS); Bachelor of Science with Special Attainments in Commerce (BSC); and Bachelor of Science with Special Attainments in Chemistry (BCH).

Grade	Points	Description
A+	4.00	Superior.
A	4.00	
A-	3.67	
B+	3.33	Good.
B	3.00	
B-	2.67	
C+	2.33	Fair.
C	2.00	
C-	1.67	
D+	1.33	Marginal.
D	1.00	
D-	0.67	
E	0.00	Conditional failure. Assigned when the student's class average is passing and the final examination grade is F. Equivalent to F in all calculations
F	0.00	Unconditional failure.

#### Grades not used in calculations:

I	-	Incomplete. Work of the course not completed or final examination deferred for causes beyond the reasonable control of the student.
P	-	Pass. Completion of course taken Pass/Fail with grade of D- or higher.
S, U	-	Satisfactory/Unsatisfactory.
WIP	-	Work-in-Progress.
W, WP, WF	-	Withdrew, Withdrew Passing, Withdrew Failing. Indicate the student's work up to the time the course was dropped or the student withdrew.

#### Grade prefixes:

R	Indicates an undergraduate course subsequently repeated at W&L (e.g. RC-).
E	Indicates removal of conditional failure (e.g. ED = D). The grade is used in term and cumulative calculations as defined above.

#### Ungraded credit:

Advanced Placement: includes Advanced Placement Program, International Baccalaureate and departmental advanced standing credits.

Transfer Credit: credit taken elsewhere while not a W&L student or during approved study off campus.

#### Cumulative Adjustments:

Partial degree credit: Through 2003, students with two or more entrance units in a language received reduced degree credit when enrolled in elementary sequences of that language.

**Dean's List:** Full-time students with a fall or winter term GPA of at least 3.400 and a cumulative GPA of at least 2.000 and no individual grade below C (2.0). Prior to Fall 1995, the term GPA standard was 3.000.

**Honor Roll:** Full-time students with a fall or winter term GPA of 3.750. Prior to Fall 1995, the term GPA standard was 3.500.

**University Scholars:** This special academic program (1985-2012) consisted of one required special seminar each in the humanities, natural sciences and social sciences; and a thesis. All courses and thesis work contributed fully to degree requirements.

### Law

**Degrees awarded:** Juris Doctor (JD) and Master of Laws (LLM)

Numerical	Letter	Grade*	Grade**	Points	Description
4.0	A			4.00	
	A-			3.67	
3.5				3.50	
	B+			3.33	
3.0	B			3.00	
	B-			2.67	
2.5				2.50	
	C+			2.33	
2.0	C			2.00	
	C-			1.67	
1.5				1.50	This grade eliminated after Class of 1990.
	D+			1.33	
1.0	D			1.00	A grade of D or higher in each required course is necessary for graduation.
	D-			0.67	Receipt of D- or F in a required course mandates repeating the course.
0.5				0.50	This grade eliminated after the Class of 1990.
0.0	F			0.00	Receipt of D- or F in a required course mandates repeating the course.

#### Grades not used in calculations:

-	WIP	-	Work-in-progress. Two-semester course.
I	I	-	Incomplete.
CR	CR	-	Credit-only activity.
P	P	-	Pass. Completion of graded course taken Pass/Not Passing with grade of 2.0 or C or higher. Completion of Pass/Not Passing course or Honors/Pass/Not Passing course with passing grade.
-	H	-	Honors. Top 20% in Honors/Pass/Not Passing courses.
F	-	-	Fail. Given for grade below 2.0 in graded course taken Pass/Fail.
-	NP	-	Not Passing. Given for grade below C in graded course taken Pass/Not Passing. Given for non-passing grade in Pass/Not Passing course or Honors/Pass/Not Passing course.

\* Numerical grades given in all courses until Spring 1997 and given in upperclass courses for the Classes of 1998 and 1999 during the 1997-98 academic year.

\*\* Letter grades given to the Class of 2000 beginning Fall 1997 and for all courses beginning Fall 1998.

#### Cumulative Adjustments:

Law transfer credits - Student's grade-point average is adjusted to reflect prior work at another institution after completing the first year of study at W&L.

**Course Numbering Update:** Effective Fall 2022, the Law course numbering scheme went from 100-400 level to 500-800 level.

Office of the University Registrar  
Washington and Lee University  
Lexington, Virginia 24450-2116  
phone: 540.458.8455  
email: registrar@wlu.edu

  
University Registrar

WASHINGTON AND LEE UNIVERSITY  
SCHOOL OF LAW  
LEXINGTON, VA 24450

June 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

This is to recommend one my students, Tom Boss, who is applying for a clerkship in your chambers upon his graduation in 2024 from Washington and Lee University School of Law. Mr. Boss was in my section of Torts in the fall semester of 2021, and he is now taking my Administrative Law course in the spring of 2023. In addition, he and I have talked frequently about his course of study and professional goals. Based on these contacts, I have a good sense of his abilities and potential for success in a challenging clerkship.

I give Mr. Boss my highest possible recommendation. In Torts, he was unfailingly prepared for class discussion, participated at a very high level throughout the term, and stood out in a class of fifty-one students. I was continually struck by the quality of his questions and comments about the assigned materials. A careful reader with an eye for detail, he would point out important ambiguities and offer perceptive comments about their implications. In addition, he excelled in unpacking the arguments made by opposing sides in the assigned cases, and on several occasions he quite brilliantly suggested how the arguments could have been improved. In discussions of an assigned book (Benjamin Cardozo's *The Nature of the Judicial Process*), he offered examples from the course to illustrate or take issue with several of Cardozo's observations. All in all, I thought his class performance was outstanding.

He is now in his second year at W&L and is taking my course in Administrative Law. The first third of the course deals with the Supreme Court's separation of powers jurisprudence. As we have gone through these difficult cases, Mr. Boss's engagement has been excellent. He has carefully analyzed leading cases, illuminating the differences among the Justices and pointing to the strengths and weaknesses of the parties' arguments. As before in Torts, his contributions to class discussion have been insightful and to the point. I could not ask for a more prepared or committed student.

I also recommend Mr. Boss for adding to the positive atmosphere of our law school community generally. He interacts well with his fellow students, who clearly respect him for his talent and decency. He has a ready sense of humor, does not take himself too seriously, and seems to have handled well the various challenges of law school.

Last but hardly least, Mr. Boss has had the zest (and stamina) to participate in a variety of demanding activities beyond the classroom. In the fall semester of 2022, he won this school's in-house moot court competition. I attended the final round of arguments (with federal judges presiding) and found his delivery and command of the material to be exemplary. In addition, in both semesters this year, he has been hard at work on a Note for our Law Review. While I am not his faculty advisor for the Note, he recently shared a draft with me. It is first-rate and persuasive, digging deeply into civil procedure issues related to federal common law. I was not at all surprised by its ambitious and intellectual rigor.

For these reasons, I recommend Mr. Boss enthusiastically. He has the mind, motivation, and judgment to succeed in a federal clerkship, and I know he would do his utmost to meet your expectations. He ranks among the top 5% of students I have encountered in four decades of law teaching at W&L.

Sincerely,

Brian C. Murchison  
Charles S. Rowe Professor of Law

Brian Murchison - [murchisonb@law.wlu.edu](mailto:murchisonb@law.wlu.edu) - 540-458-8511

WASHINGTON AND LEE UNIVERSITY  
SCHOOL OF LAW  
LEXINGTON, VA 24450

June 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I most enthusiastically recommend Tom Boss for a judicial clerkship. Tom is not only an extraordinary student—the most talented and gifted advocates that I have had the pleasure to teach or work with—but a great person. Tom is a truly impressive young professional. As background, I had Tom in my criminal law class.

In my criminal law class, Tom, quite frankly, dominated—he received the highest score in my class (out of fifty students) on a very difficult exam. And, it was not even close. Out of the possibility of 110 raw points for my exam, Tom received 108 points—the class average was around 75 points. In my four years teaching criminal law, Tom received the highest raw score ever.

The fluency in criminal law theory and concepts with which Tom achieved suggests an extraordinary talent. Of equal importance to the grade he earned, I found Tom to be genuinely animated by the intellectual endeavor that is the study of the law. He was always prepared for class. And his curiosity and enthusiasm led him to ask tough and insightful questions or offer comments that sparked critical inquisitiveness in his classmates and helped me explore or better explain issues. When Tom spoke, every student listened; they knew he was going to raise an important question and/or provide necessary commentary on an issue. Tom also struck me as a natural leader, raising many issues concerning racial disparities in our criminal legal system—an issue that first-year law students often avoid. Tom acutely pointed out that regimes, from policing through sentencing, are a criminal justice domain in which inequalities abound—and in ways that raise profound questions about fairness, due process, and justice. It is this perspective and interest that he will bring to a clerkship. Tom also appreciates that to truly understand issues, you must get proximate to the administration of justice—that is his motivation to serve as a law clerk.

Tom's work was so impressive in my course, that I asked him to be my research assistant. He is the second student in my five years teaching that I personally recruited to be my research assistant—I usually receive several dozen to a hundred inquiries about working for me (I hire about 3-5 research assistants). As a leading movement and abolition scholar, I have worked on several projects over the past several years that have received national attention—from movement law to abolition democracy. My work was profiled and featured in *Slate*, *The Nation*, *Vox*, *Washington Post*, and *NBC News*. I am also an expert columnist for *The Boston Globe's The Emancipator*. I have published works in leading law reviews that theorizes and advances abolition constitutionalism, movement law, and abolition democracy. My work is bold and creative, providing novel insights on constitutional theory and beyond. I mention all of this because Tom is involved in much of this work—he researched and drafted legal memoranda, commented on drafts, and provided first drafts on a few of my keynote addresses. Because of my work, Tom is well versed in constitutional and statutory interpretive frameworks—from originalism, to textualism, to abolition constitutionalism to pragmatism and everything in between. Tom's work product and knowledge base is comparable to someone with ten years of legal experience—just exceptional. Simply put, Tom is a standout.

Tom is also an incredible citizen of our law school. He is a junior editor on the *Washington and Lee Law Review*—a widely respected journal in which an invitation to join only follows after a competitive write-on process. I serve as the *Law Review's* faculty advisor. In that capacity, senior editors have reported to me that Tom has brilliantly performed in a wide range of demanding editorial duties. Further, Tom is responsible for writing a law review note on a novel topic of legal interest. Tom, never afraid of a challenge, has decided to explore how energy companies are misusing civil procedure and the federal common law to avoid accountability for climate change. Tom contends that preemption doctrine should be used to prevent these energy companies, and state courts, from kicking these cases out on procedural grounds. Tom's paper is dynamite! Tom is also a phenomenal advocate, winning our highest prize in our moot court appellate advocacy competition. It was a virtuoso performance on a case at the intersection of First and Fourth Amendment jurisprudence. I should add that it is very likely that Tom is ranked one in his entire class. All of this demonstrates he is the real deal!

As a former law clerk to two judges—the Honorable Roger L. Gregory (4th Cir.) and the Honorable Emmet G. Sullivan (DDC)—I, more than most, understand what is expected of a law clerk: trustworthiness, dependability, and excellence. Tom exudes trustworthiness and reliability—he is a real self-starter with an intuitive grasp for what needs to be done and how. Tom is also a person of integrity, perspective, and balance. Reflective and poised, he is always thinking of how to improve, but he also has mettle, confidence, and great tenacity to tackle difficult and thorny legal questions. Tom thrives in interpersonal relations, and would mix respectfully with other law clerks and staff. I would trust him with any work product, no matter how sensitive, and have the utmost confidence that he would always conduct himself with dignity and discretion. More importantly, in my opinion, Tom's compassion and passion separates him from most—he will work tirelessly to ensure that your bench memorandums are well researched and recommend the right result for the right reasons. That is excellence—excellence that he has demonstrated throughout his career at Washington and Lee University School of Law.

In sum, I offer Tom my most enthusiastic and unreserved recommendation. Tom is the best. He will be an amazing law clerk. It is

Brandon Hasbrouck - bhasbrouck@wlu.edu

my sincere hope that he has the opportunity and privilege to work for you, Judge.

Please feel free to reach out to me at [bhasbrouck@wlu.edu](mailto:bhasbrouck@wlu.edu) or 914-443-1324 should you have any questions.

Sincerely,

Brandon Hasbrouck  
Associate Professor of Law

Brandon Hasbrouck - [bhasbrouck@wlu.edu](mailto:bhasbrouck@wlu.edu)

WASHINGTON AND LEE UNIVERSITY  
SCHOOL OF LAW  
LEXINGTON, VA 24450

June 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to offer my strongest possible support for Tom Boss's application for a clerkship in your chambers. He is a brilliant student whose robust and multifaceted approach to the law reflects his wide range of experiences. He will have an unparalleled career as an attorney, and he has my strongest support of any member of his class for a clerkship.

I learned to know Tom in my property class. His insightful, incisive analysis led the class. He was the student most likely to bring highly informed perspectives on economics and philosophy. His comments reflected a wide range of lived experience. He was not afraid to engage with hard policy topics, and articulated his perspective in a clear and convincing manner. He worked extraordinarily hard. At every turn I found Tom prepared and possessed of immediate real insight into the topic at hand, regardless of how difficult. His clear and straightforward answers were grounded on a wide-flung cognitive toolset, extraordinary work ethic, and clear gift for analysis. He received by far the best grade in the class.

Since then, Tom has gone on from strength to strength. His GPA of 3.909 puts him among the very top few students in his class. He won the Oral Advocacy component of the Davis competition, and was a finalist for best brief. He is simply the best W&L has to offer.

Tom is the most impressive thinker of his class, and frankly the most impressive student I have seen in a decade. He will be an absolutely superb lawyer, representing the highest aspirations of the profession. Please do not hesitate to contact me via email at fairfieldj@wlu.edu, or on my personal cell at 540.490.0457, if I can advance his candidacy in any way.

Warmest regards,

Joshua Fairfield  
Professor of Law

Joshua Fairfield - fairfieldj@wlu.edu - 540-458-8529



## WRITING SAMPLE

Tom Boss  
208 North Lewis Street  
Lexington, VA 24450  
(207) 745-8510

As part of the 2022 John W. Davis Moot Court Competition, I prepared an appellate brief, a portion of which is attached below. I was assigned to write and argue on behalf of the petitioner, Alexandra Klein. Petitioner argued that the respondent, John Shapiro, violated her First Amendment right to film the police when he took her phone as she was filming an arrest during a protest in a public park, and filed a § 1983 claim against respondent. Petitioner also argued that, due to respondent's training and prior law school experience, he had actual knowledge that he was violating her First Amendment rights.

Both the trial court and appellate court below granted summary judgment on the ground of qualified immunity. The two questions before the Supreme Court were:

- (1) whether qualified immunity should have been granted; and
- (2) whether respondent's actual knowledge that he was committing a constitutional violation prevented the application of qualified immunity.

This brief was selected as a finalist for the writing portion of the competition.

**ARGUMENT****Issue 1: Qualified Immunity Should Not Be Granted Because the Right to Film Police was Clearly Established**

Here, the lower courts erred in concluding that qualified immunity protected Officer Shapiro's conduct because it incorrectly concluded that the right to film police in a public location was not clearly established. Qualified immunity is a judicially-created doctrine that "balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Government officials who successfully raise the defense will be "shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). A court will use a two-pronged analysis to determine whether qualified immunity will shield an official from liability, asking: (1) whether the facts alleged or shown by plaintiff make out a violation of a constitutional right and (2) if so, whether the right was clearly established at the time of the defendant's alleged violation. *Glik v. Cunniffe*, 655 F.3d 78, 81 (1st Cir. 2011). However, this Court determined in *Pearson* that lower courts may resolve qualified immunity on either prong in order to spare "scarce judicial resources on difficult questions that have no effect on the outcome of the case." 555 U.S. at 236–37. Here, the Court of Appeals incorrectly concluded this case only on the second prong, erroneously deciding that the right to film police was not clearly established at the time of the incident. *Klein v. Shapiro*, 46 F.4th 902, 906 (2022).

### I. Qualified Immunity Fails Where the Law is Clearly Established

For a right to be clearly established, “[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). This test is objective, focusing on the reasonableness of the official’s action “assessed in light of the legal rules that were ‘clearly established’ at the time it was taken.” *Id.* at 639. There does not have to be “a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

Courts may look to “controlling authority in their jurisdiction” to determine if a right has been clearly established. *Wilson v. Layne*, 526 U.S. 603, 617 (1999). Absent controlling authority or a case on point, there may be a “consensus of cases of persuasive authority such that a reasonable officer could not have believed that his actions were lawful.” *Id.* However, “officials can still be on notice that their conduct violates established law even in novel factual circumstances.” *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). Even where there is no consensus, “there can be the rare ‘obvious case,’ where the unlawfulness of the officer’s conduct is sufficiently clear even though existing precedent does not address similar circumstances.” *District of Columbia v. Wesby*, 138 S. Ct. 577, 591 (2018) (citing *Brosseau v. Haugen*, 543 U.S., 194, 199 (2004)). Here, each of these three methods—controlling authority, consensus, and rare case—demonstrate that the right to film the police while in a public location was clearly established at the time this incident occurred. As a result, Shapiro’s qualified immunity defense should fail as a matter of law.

## II. Controlling Authority Clearly Established the Right to Film Police

The right to film the police has been clearly established by controlling precedent, and the lower courts in this case erred in finding otherwise. While this Court has yet to expressly hold such a right exists, existing precedent has placed the existence of this right “beyond debate.” *al-Kidd*, 563 U.S. at 741. In *City of Houston v. Hill*, this Court struck down a statute that prohibited interrupting police in the course of their duty, finding that “[t]he Constitution does not allow such speech to be made a crime. The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.” 482 U.S. 451, 462–63 (1987). While in *Hill* the respondent had shouted at the police, this Court has long held that video recordings deserve at much protection under the First Amendment as verbal speech. See *Burstyn v. Wilson*, 343 U.S. 495, 502 (1952) (“[W]e conclude that expression by means of motion pictures is included within the free speech and free press guaranty of the First and Fourteenth Amendments.”). Furthermore, “one is not to be punished for nonprovocatively voicing his objection to what he obviously felt was a highly questionable detention by a police officer,” *Norwell v. Cincinnati*, 414 U.S. 14, 16 (1973), which is exactly what Klein was punished for in this case.

Furthermore, Klein’s speech was not just for her own benefit, but served a public news gathering function as she livestreamed the arrest to her followers. This Court has repeatedly held that the First Amendment prevents restrictions on news gathering, particularly on matters of public interest where the government is involved. See *Houchins v. KQED, Inc.*, 438 U.S. 1, 11 (1978) (“There is an undoubted right to gather news from any source by means within the law.”); *First Nat’l Bank v. Bellotti*, 435 U.S. 765, 783 (1978) (“The First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from

limiting the stock of information from which members of the public may draw.”); *Hustler Magazine v. Falwell*, 485 U.S. 46, 50 (1988) (“At the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern.”). Contrary to the warning against “defin[ing] clearly established law at a high level of generality,” *al-Kidd*, 563 U.S. at 742, the aforementioned cases squarely and specifically place the right to film interactions with the police under the protections of the First Amendment. The freedom to challenge police via speech, including through filming, is especially important where such speech communicates news on important societal matters to a broader audience. Under such unequivocal statements from this Court, no reasonable officer could have thought that the law permitted interfering with a person’s right to peacefully film their interactions for the purpose of recording important public matters.

### III. A Robust Consensus Clearly Established the Right to Film Police

Even if this Court finds such statements insufficient to place the question “beyond debate,” there is still a robust consensus of persuasive authority that would put any reasonable officer on notice that the First Amendment protects the public’s right to film their interactions with the public. At the time of Shapiro’s action, half of the federal Courts of Appeal had passed on this question and found that the First Amendment protects this right. *See Glik*, 655 F.3d at 78; *Buehler v. City of Austin*, 2015 U.S. Dist. LEXIS 20878, at \* 21 (W.D. Tex. 2015), *aff’d* 824 F.3d 548 (5th Cir. 2016), *cert denied* 137 S. Ct. 1579 (2017); *ACLU of Ill. v. Alvarez*, 679 F.3d 583 (7th Cir. 2012); *Walker v. City of Pine*, 414 F.3d 989 (8th Cir. 2005); *Fordyce v. City of Seattle*, 55 F.3d 436 (9th Cir. 1995) (granting qualified immunity but holding that there is a First Amendment right to record issues of public interest); *Smith v. City of Cumming*, 212 F.3d 1332 (11th Cir. 2000). Later cases such as *Turner v. Lieutenant Driver*, 848 F.3d 678 (5th Cir. 2017),

and *Fields v. City of Philadelphia*, 862 F.3d 353 (3d Cir. 2017), questioned whether this right was established in 2015 and 2013 respectively, but cannot be used as a basis for saying respondent was reasonable in thinking he was permitted to physically prevent Klein from filming the arrest as they arose *after* the conduct occurred.

The only cases that Shapiro could have relied on at the time to say there was doubt as to whether the right existed are easily distinguishable and would not cause a reasonable officer to believe the conduct Shapiro engaged in was constitutional. In *Kelly v. Borough of Carlisle*, 622 F.3d 248 (3d Cir. 2010), the Third Circuit confronted the issue of whether there was “a right to videotape police officers during a traffic stop.” *Id.* at 262. After reviewing many of the cases cited above, the Third Circuit ultimately held that such a right was not clearly established because those cases were “insufficiently analogous to the facts of this case.” *Id.* It found that, “insofar as it is clearly established, the right to record matters of public concern is not absolute; it is subject to reasonable time, place, and manner restrictions.” *Id.* While superficially contrary, the *Kelly* court is in line with other courts who found a right to film police existed, but also acknowledged this right is not absolute. *See, e.g., Glik*, 655 F.3d at 84 (“To be sure, the right to film is not without limitations. It may be subject to reasonable time, place, and manner restrictions.”); *Alvarez*, 679 F.3d at 607 (recognizing reasonable restrictions on behavior that obstructs or interferes with effective law enforcement or the protection of public safety). Similarly, the Tenth Circuit in *Mocek v. City of Albuquerque*, 813 F.3d 912 (10th Cir. 2015), held that the right to film officers was not clearly established, but in very different factual circumstances. *Mocek* involved filming in an airport security checkpoint, a fact frequently mentioned by the court in regards to whether time, place, and manner restrictions applied. *See id.* at 931–32 (finding that the airport’s status as a nonpublic forum subjected the filming to

restrictions). These cases help illuminate “[t]he contours of the right [and make it] sufficiently clear” to an officer what circumstances may warrant time, place, or manner restrictions.

Based on the aforementioned cases, the right to film police encounters may be restricted in nonpublic forums where the context involves an “inherently dangerous situation” such as a traffic stop. *Kelly*, 622 F.3d at 262. Even so, the “regulations of the time, place, and manner of expression [must be] content-neutral, [must be] narrowly tailored to serve a significant government interest, and [must] leave open ample alternative channels of communication.” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983). In this case, Shapiro’s impromptu regulation satisfied only the content-neutral criteria. Shapiro chose to shut down Klein’s lawful filming, physically preventing her from continuing after she refused. This restriction was neither narrowly tailored to serve a significant government interest nor allowed an alternative channel of communication. While Shapiro may have been concerned about public safety, his actions did nothing to alleviate such concerns. There is no mention in the record that the members who noticed Klein’s filming were approaching or had any intention to cause her harm. Nor did his physical intrusion allow an alternative channel for communication. Klein’s livestream audience was suddenly cut off from this publicly important broadcast when Shapiro forcibly ended the livestream. This conduct does not satisfy the strict requirements for a reasonable time, place, and manner restriction and is therefore easily distinguishable from the restrictions found acceptable in *Kelly* and *Mocek*.

In sum, the consensus of the federal appellate courts is unequivocal: the right to film matters of public interest is clearly established, but not absolute. These cases were available to Shapiro and specifically defined both Klein’s right to film the arrest and Shapiro’s range of

permissible restrictions, which he failed to abide by. The fact that this consensus so clearly established the right to film police encounters now bars him from claiming qualified immunity.

#### **IV. This is an Obvious Case Where Shapiro’s Conduct was Clearly Unlawful**

Finally, even if not established by Supreme Court or federal Circuit Court precedent, this case is the “rare ‘obvious case,’ where the unlawfulness of the officer’s conduct is sufficiently clear even though existing precedent does not address similar circumstances.” *Wesby*, 138 S. Ct. at 591. The conduct in this case occurred in a public park, a place this Court has said is the “quintessential forum for the exercise of First Amendment rights.” *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017). Not only would the location put a reasonable officer on notice that such rights are worthy of the highest protection, but the event of a protest would also indicate that the officer should be wary of denying any sort of First Amendment expression. *See Brown v. Louisiana*, 383 U.S. 131, 141–42 (1966) (reiterating that the right to protest encompasses all sorts of speech, and “are not confined to verbal expression”). The obviousness of such a case was apparent to the First Circuit in *Glik*, which found that the right to film police encounters in a public park was so “fundamental and virtually self-evident” that they had “no trouble concluding that ‘the state of the law at the time of the alleged violation gave the defendant[s] fair warning that [their] particular conduct was unconstitutional.’” *Glik*, 655 F.3d at 85 (quoting *Maldonado v. Fontanes*, 568 F.3d 263, 269 (1st Cir. 2009)) (alterations in original).

If this Court were to hold that the right to peacefully film a police encounter during a protest in a public park was not clearly established, it would be rolling back vital protections for both the press and the public to prevent future abuses by police. Such protections have proven critically important to society, bringing to light the beatings and killings of Rodney King, Eric Garner, George Floyd, and many others at the hands of a police force with unchecked discretion and



near-total immunity. Unfortunately for many of those victims, the doctrine of qualified immunity has prevented effective prosecution. *See, e.g., Jamison v. McClendon*, 476 F. Supp. 3d 386, 390–92 (S.D. Miss. 2020). But the citizens who filmed these gruesome acts have proven that the right to record the police plays an important, obvious, role in upholding “one of the principal characteristics by which we distinguish a free nation from a police state,” and should not likewise fall prey to unchecked grants of qualified immunity. *Hill*, 482 U.S. at 462–63.

Whether by this Court’s own clear precedent, a robust consensus among the courts below, or because this case presents the textbook example of police intrusion on a fundamental right, any reasonable officer would have been on notice that physically preventing the filming of an arrest would be unconstitutional, thus barring the defense of qualified immunity.

## **Issue 2: Actual Knowledge Precludes Qualified Immunity**

In addition, this Court should find that Officer Shapiro’s actual knowledge of the law precludes a qualified immunity defense. Prior to *Harlow*, the qualified immunity test contained an objective and a subjective prong. *Harlow*, 457 U.S. at 815. The Court characterized the objective prong as a knowledge and respect for basic constitutional principles, while the subjective prong analyzed whether the officer acted with “permissive intentions.” *Id.* (quoting *Wood v. Strickland*, 420 U.S. 308, 322 (1975)). It stated that the objective and subjective prongs would bar the immunity defense where an officer “*knew or reasonably should have known* that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action *with the malicious intention* to cause a deprivation of constitutional rights or other injury.” *Id.* (emphasis in the original). The Court’s emphasis shows the objective prong, “knew or should have known,” contains an actual knowledge standard, while the subjective prong looks at the “malicious intention” of the officer. The Court’s

abandonment of the subjective prong did not include this actual knowledge standard, and later cases in this Court and lower courts have used actual knowledge to preclude a qualified immunity defense.

### **I. *Harlow*'s Objective Standard did not Abandon Actual Knowledge**

The new rule imposed in *Harlow* gave judges the discretion on summary judgment to determine if the officer could “fairly be said to ‘know’ that the law forbade conduct not previously identified as unlawful.” *Id.* at 818. Justice Brennan further clarified the retention of an actual knowledge standard in *Harlow* by expressly recognizing the new rule, in which he “agree[d] with the substantive standard announced by the Court today, imposing liability when a public-official defendant ‘knew or should have known’ of the constitutionally violative effect of his actions.” *Id.* at 820–21 (Brennan, J., concurring). As such, while abandoning a subjective inquiry into malicious intention, the Court in *Harlow* maintained the objective prong, a part of which asked whether it can be fairly said that the officer “knew or should have known” their actions were unconstitutional.

### **II. Subsequent Interpretations have Retained the Actual Knowledge Standard**

Subsequent qualified immunity cases from this Court have also recognized the actual knowledge standard. In *Malley*, one of the first cases utilizing the new *Harlow* standard, the Court reaffirmed that “an allegation of malice is not sufficient to defeat immunity if the defendant acted in an objectively reasonable manner.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986). But the Court recognized that “[a]s the qualified immunity defense has evolved, it provides ample protection to all but the plainly incompetent or *those who knowingly violate the law*.” *Id.* (emphasis added). *See also al-Kidd*, 563 U.S. at 743 (discussing whether the petitioner was “plainly incompetent or . . . knowingly violate[d] the law” and deciding he “deserve[d]

neither label). This Court provided further guidance in *Anderson*, a qualified immunity case regarding a Fourth Amendment search, by stating that inquiring into the objective reasonableness of an official's conduct "will often require examination of the information possessed by the searching officials." 483 U.S. at 641. The Court again stated that "the objective (albeit fact-specific) question [is] whether a reasonable officer [could have believed they acted lawfully], in light of clearly established law and the information the searching officers possessed." *Id.* In short, this Court has continued to recognize that the actual knowledge of an official is key to the qualified immunity analysis.

### III. Actual Knowledge is a Bar to Qualified Immunity

Not only does actual knowledge play a role in the qualified immunity analysis, it can also bar the defense entirely. This Court has used actual knowledge to bar qualified immunity before, indicating that even the suggestion officials had actual knowledge weighs heavily against the reasonableness of their action. *Hope*, 536 U.S. at 744 ("Our conclusion that 'a reasonable person would have known,' of the violation is buttressed by the fact that the DOJ specifically advised the ADOC of the unconstitutionality of its practices before the incidents in this case took place."). Lower courts have also used actual knowledge to bar qualified immunity. *See Davis v. Hall*, 375 F.3d 703, 719 (8th Cir. 2004) ("Martin and Knell had actual knowledge of the court order but failed to act."); *Camilo-Robles v. Hoyos*, 151 F.3d 1, 14 (1st Cir. 1998) ("[T]he court supportably could have concluded that Diaz-Martinez presented a serious risk of harm and that Diaz-Pagan knew as much."); *United States ex rel. Citynet, LLC v. Gianato*, 962 F.3d 154, 159–60 (4th Cir. 2020) ("[Q]ualified immunity does not protect government officials when they act to violate the law with actual knowledge, deliberate ignorance, or reckless disregard of a risk to a constitutional or statutory right.").

The Court of Appeals erroneously relied heavily on *Frasier v. Evans*, 992 F.3d 1003 (10th Cir. 2021), to support its conclusion that actual knowledge does not bar a qualified immunity claim by Officer Shapiro. This was fundamentally flawed. Besides the fact that *Frasier* is merely persuasive authority, the Tenth Circuit called the case into question only a year later, further diminishing its persuasive value. See *Irizarry v. Yehia*, 38 F.4th 1282, 1295–96 (10th Cir. 2022) (finding *Frasier* lacked persuasiveness because of the recent and unanimous weight of authority contradicting it). Furthermore, *Frasier* ignored this Court’s explicit test in *Malley* without explanation and instead relied on precedent from other Circuits to exclude actual knowledge from the *Harlow* standard. *Frasier*, 992 F.3d 1016–17. *Frasier*’s poor reasoning and complete break with this and other Circuit Courts’ long-established precedent should prevent it from persuading this Court that actual knowledge is irrelevant to the qualified immunity analysis. Based on this Court’s own precedent and cases from lower courts that apply such precedents correctly, a showing that an officer had actual knowledge they were violating a constitutional right can bar a claim for qualified immunity.

## Applicant Details

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 Middle Initial **C.**  
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## Applicant Education

BA/BS From **University of Virginia**  
 Date of BA/BS **August 2020**  
 JD/LLB From **University of Richmond School of Law**  
[http://www.nalplawsonline.org/content/OrganizationalSnapshots/OrgSnapshot\\_235.pdf](http://www.nalplawsonline.org/content/OrganizationalSnapshots/OrgSnapshot_235.pdf)  
 Date of JD/LLB **May 12, 2024**  
 Class Rank **15%**  
 Law Review/Journal **Yes**  
 Journal(s) **University of Richmond Law Review**  
 Moot Court Experience **No**

## Bar Admission

### **Prior Judicial Experience**

Judicial  
Internships/        **No**  
Externships  
Post-graduate  
Judicial Law       **No**  
Clerk

### **Specialized Work Experience**

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**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

4643 Jennway Loop  
Moseley, VA 23120

June 12, 2023

The Honorable Jamar K. Walker  
United States District Court for the Eastern District of Virginia  
600 Granby Street, Room 344  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to express my interest in clerking in your chambers for the 2024–2025 term. I am a rising 3L at the University of Richmond School of Law, who is interested in the practical training, intellectual challenge, and professional mentorship clerking offers. This summer, I am interning with the IRS Office of Chief Counsel through their honors program, which serves as a pipeline for law students to begin their careers with the agency. The office in which I currently work and expect to begin my career is litigation focused. Moreover, first-year attorneys in my office often begin practicing before the court early in their careers. As such, I am eager to gain exposure to federal litigation, as well as to the operation of federal courts, before I begin my career in my office.

My academic and professional training have prepared me well to serve as a clerk in your chambers. I have consistently maintained a high class rank, and I have generally seen my academic performance improve each semester. In addition to my coursework, I currently serve as the Editor-in-Chief of the *University of Richmond Law Review* for Volume 58. As Editor-in-Chief, I have carefully and critically reviewed numerous pieces of legal scholarship, while also managing a large editorial staff and demanding publication schedule. Additionally, my research and writing skills have been further developed in my roles as a Research Assistant to Professor Daniel Schaffa and as a Research Clerk for Crowgey & Associates. Last, but not least, I have good interpersonal skills. As an intern at The Community Tax Law Project, I counseled several clients through complex and sensitive legal issues. Additionally, I spent many years in the food service industry, and I come from a family of service industry professionals. All in all, I am an earnest student and worker, who is seeking opportunities to challenge myself as I continue to develop as a professional in legal practice.

I hope to have the opportunity to share more about myself and my interest in working in your chambers. Please find my application materials enclosed and notify me if you require any additional information. Thank you for your time and consideration in reviewing my application. I look forward to hearing from you soon.

Sincerely,



Caleb C. Briggs

Enclosures: Resume, Writing Sample, Transcript, and References

## CALEB C. BRIGGS

4643 Jennway Loop Moseley, VA 23120 | [caleb.briggs@richmond.edu](mailto:caleb.briggs@richmond.edu) | (804) 878-1283

### EDUCATION

#### University of Richmond School of Law

Richmond, VA

*Candidate for Juris Doctor*

May 2024

- GPA: 3.77 (Class Rank: Top 15%)
- Editor-in-Chief, *University of Richmond Law Review*, Vol. 58
- Research Assistant, Daniel Schaffa
- Honor Societies: Omicron Delta Kappa, Phi Delta Phi
- Lewis F. Powell, Jr. American Inn of Court

#### University of Virginia

Charlottesville, VA

*Bachelor of Arts*, conferred with Distinction

August 2020

- Member, The Jefferson Literary and Debating Society

### EXPERIENCE

#### IRS Office of Chief Counsel

Richmond, VA

*Legal Administrative Specialist*

Summer 2023

- Researching federal tax statutes and regulations, legislative history, agency rulings, and case law
- Preparing oral and written reports, correspondence, and legal documents
- Providing administrative support to staff attorneys

#### Crowgey & Associates

Richmond, VA

*Research Clerk*

Fall 2022

- Researched local, state, and federal tax laws for individuals, and public and private entities
- Prepared oral and written reports on a variety of tax issues
- Collaborated in determining the scope and direction of research questions

#### Muse Law Library

Richmond, VA

*Circulation Desk*

Fall 2022

- Assisted library patrons with locating and borrowing library resources
- Helped to maintain the organization of the library's collection

#### The Community Tax Law Project

Richmond, VA

*Legal Intern*

Summer-Fall 2022

- Managed an individual case load of clients with a variety of tax issues
- Researched, analyzed, and presented solutions to individual tax controversies to staff attorneys
- Conducted weekly intake interviews



## UNIVERSITY OF RICHMOND

Student No: \*\*\*\*-0846

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Page: 1

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Only Admits: Fall 2021

Current Curriculum

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College: School of Law

Major: Law

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COURSE TITLE

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Institution Information continued:

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LAW 780 RESEARCH ASSISTANT - P/F 1.00 P 0.00

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LAWR 516 PROPERTY 2.00 A- 7.40

LAWR 518 LEGAL ANALYSIS &amp; WRITING II 2.00 B+ 6.60

LAWR 519 LEGISLATION AND REGULATION 3.00 A- 11.10

LAWR 521 LEGAL RESEARCH II 1.00 A- 3.70

LAWR 523 PROF. IDENTITY FORMATION II 1.00 P 0.00

Ehrs: 16.00 GPA-Hrs: 15.00 QPts: 54.00 GPA: 3.60

Fall 2023

IN PROGRESS WORK

LAW 606 WILLS AND TRUSTS 4.00 IN PROGRESS

LAW 623 CORPORATE TAXATION 2.00 IN PROGRESS

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Spring 2024

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LAW 635 TAXATION/PARTNERSHIPS &amp; LLCs 2.00 IN PROGRESS

LAW 638 LAW AND LITERATURE 2.00 IN PROGRESS

LAW 653 INTRODUCTION TO BUSINESS 2.00 IN PROGRESS

LAW 658 SECURITIES REGULATION 3.00 IN PROGRESS

LAW 748 ADVANCED LEGAL RESEARCH 2.00 IN PROGRESS

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Fall 2022

LAW 599 EVIDENCE 4.00 A 16.00

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Kristen A. Ball, University Registrar



June 9, 2023

The Honorable Jamar K. Walker  
United States District Court  
Eastern District of Virginia  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

**Re: Recommendation for Caleb Briggs**

Dear Judge Walker:

I am writing to offer my full support for Caleb Briggs' application to serve as a law clerk in your chambers. I have had the pleasure of working with Caleb all four semesters he has been in law school. Caleb is an extremely strong student, showing a consistent desire to master legal analysis, writing, research and drafting. He was also a delight to interact with both inside and outside of class.

During his first year of law school, Caleb was a student in my full-year Legal Analysis and Writing course. His analytic skills were top notch from the beginning of the year and he worked hard to adapt his writing style from one befitting an English Literature major, to that used in predictive legal analysis. As with many English majors, it took him a bit of time to adapt, but now he is amongst my strongest student authors. Most recently, during the spring of his second year, he completed an impressive independent study paper under my supervision. Further, this coming year he will serve as the Editor-in-Chief of the University of Richmond Law Review. All of these experiences have led me to believe that Caleb will be an wonderful, dedicated, and helpful law clerk.

Caleb and I have spoken several times regarding his desire to serve as a law clerk upon graduation. He has always had an interest in clerking; however, this summer's exposure to a litigation practice at the Internal Revenue Service has pushed him to apply. He is very excited about the opportunity to learn more about the judicial process and observe key litigation skills. Further, while I know he would gain much from clerking, I am confident that you would enjoy having him in your chambers.

Please do not hesitate to contact me with any questions at (804)467-0965 or by email at [rsuddart@richmond.edu](mailto:rsuddart@richmond.edu).

Sincerely,

A handwritten signature in blue ink that reads "Rachel J. Suddarth".

Rachel J. Suddarth  
Professor of Law, Legal Practice

**Faculty**  
203 Richmond Way  
University of Richmond, VA 23173  
[law.richmond.edu](http://law.richmond.edu)



June 12, 2023

The Honorable Jamar K. Walker  
 United States District Court  
 Eastern District of Virginia  
 Walter E. Hoffman United States Courthouse  
 600 Granby Street  
 Norfolk, VA 23510-1915

RE: Judicial Clerkship Applicant Caleb Briggs

Dear Judge Walker:

I write to give my strongest recommendation of Caleb Briggs for a judicial clerkship in your chambers. Caleb Briggs is one of Richmond Law's most talented students, and I have no doubt that he would make a fantastic clerk.

Caleb has been a student in two of my classes—evidence and my death penalty seminar. He received a perfect A in both classes, and in candor, he was one of my favorite students in both classes, even before I knew his grades. Evidence was a relatively large class with 50 students, and Caleb was just a rock star in that class. He understood the concepts almost instinctively (even hearsay!) and his questions and comments demonstrated a depth of knowledge that was simply unmatched by his classmates. Caleb was the student who could answer my socratic questions when no one else could, and he was the student who saw the connections between the various doctrines, and the theoretical constructs that tied them together.

My death penalty class was smaller, just 16 students, and in this class, I was able to see a different side of Caleb, which I liked just as much. In my death penalty class, Caleb was thoughtful, balanced, and welcoming of viewpoints that differed from his own. There I saw him ask probing, insightful questions and make class contributions that brought out the best in others. In this class I saw Caleb's character—his empathy, his sense of justice, his integrity in all situations, and his nature as a friend to all. I am *really* impressed with Caleb Briggs. In fact, when I became the faculty advisor of the Lewis Powell Inn of Court this spring, my first task was to identify the law school's best and brightest students for student membership in the Inn. Caleb Briggs was literally the first name I put on my list.

Two other points merit mention here. First, Caleb is obviously smart—his 3.77 grade point average shows that much—but somehow he manages to match that academic success with involvement in time-intensive extracurricular work. Caleb is the incoming Editor-in-Chief of the *University of Richmond Law Review*, a reflection of not only his work ethic and intellectual acumen, but also his stature among his peers, who I can attest clearly adore him. He has also served as a research assistant and worked at the library circulation desk. I'm not quite sure how Caleb manages to do all that he does, but he is obviously functioning at a very high level, which would serve him well as a judicial clerk.

Second, Caleb wants to clerk for all the right reasons. I always ask my students why they want to clerk, and in his email reply, this is what Caleb wrote: "I always felt that I would really enjoy the work: the rigorous analysis, aspirational neutrality, policy considerations, and the exposure to well-executed arguments (or bad ones) and courtroom demeanor of all varieties....I am always eager to be challenged intellectually, and working alongside a judge presents a great opportunity to gain a valuable mentor, who I hope challenges me as a scholar, professional, and individual. There truly is no professional

**Faculty**  
 203 Richmond Way  
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June 12, 2023  
Page 2

experience that rivals clerking.” This is quintessential Caleb Briggs. I can’t think of a better set of reasons to clerk, or a better candidate for a clerkship.

In sum, Caleb Briggs is a smart, engaged leader of the law school even in his second year, and he is a truly wonderful human being. I hope you will take the time to interview Caleb, as I suspect you will want to hire him. He would be a fantastic choice.

Sincerely,



Corinna Barrett Lain  
S.D. Roberts & Sandra Moore  
Professor of Law

**Faculty**  
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University of Richmond, VA 23173  
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## The Community Tax Law Project

5206 Markel Road, Suite 100-B, Richmond, Virginia 23230  
Phone (804) 358-5855 Fax (804) 353-6968 info@ctlp.org www.ctlp.org

June 12, 2023

Your Honor:

It is with great pleasure and enthusiasm that I recommend Caleb Briggs for a judicial clerkship upon his graduation from University of Richmond School of Law.

I have known Caleb since he first interned with our tax clinic for the summer of 2022. As a low-income taxpayer clinic, The Community Tax Law Project (CTLP) provides free legal services to taxpayers throughout Virginia in their tax disputes with the IRS and the Virginia Department of Taxation. CTLP also provides education and outreach to low-income taxpayers and English as a second language speakers. Despite having little or no tax background in his coursework, Caleb hit the ground running and proved to be a very fast learner in a subject matter that can be quite challenging.

Throughout the course of Caleb's internship with CTLP, he participated in every aspect of our work with clients—from intakes to case controversy work. He treated staff and clients alike with respect and compassion. He explained complex tax matters to clients to make sure that they understood their case and how we could help them. He did research on tax matters and composed client correspondence. He thought deeply about the matters that our clients were facing, not just on the tax level, but in the big picture. Caleb was always punctual, professional, and reliable as an intern, and he took the internship very seriously.

As tax attorneys, we often learn a lot of different personal details about our clients' lives throughout the course of our representation of them, and we often handle very sensitive information for our clients. Caleb took this role very seriously and did not shy away from having difficult conversations with clients. Some of those conversations included situations in which Caleb corresponded back and forth with clients about their cases but ultimately, we were unable to help them or get the result they wanted. Caleb handled these conversations with grace, making sure that our clients felt heard. I remember one client in particular for whom he fought so hard because she was in such a dire financial situation and really needed help. Caleb explored every option to see if we could help her obtain any relief. He had many conversations with her and prepared complicated financial forms for her in an effort to address her outstanding tax debt in a way that would help her. It was obvious that he truly cared about her and the outcome of her case.

Caleb is incredibly easy to get along with, and an all-around great person. I have appreciated and enjoyed getting to know him through his work with CTLP, and we have remained in contact since he concluded his internship. As an example of Caleb's character, I was touched when he offered to extend his internship into the

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**Anne Oliver, Esq.**  
Cherry Bekaert LLP

**D. Shane Smith, Esq.**  
Whiteford Taylor Preston

**Mary Slonina, Esq.**  
PwC

**Melissa L. Wiley, Esq.**  
Caplin & Drysdale

### Advisory Board:

**Elizabeth J. Atkinson, Esq.**  
**Craig D. Bell, Esq.**

**Neil V. Birkhoff, Esq.**  
**John W. Flora, Esq.**

**Frances F. Goldman, Esq., CPA**  
**J. William Gray, Jr., Esq.**

**Timothy L. Jacobs, Esq.**  
**Bradley A. Riddlehoover, Esq.**

fall and past the conclusion of his summer 2022 internship, because he knew that our organization was experiencing some staffing changes which were leaving us short-staffed. Despite his very full schedule between law school and a part-time job, he made good on his offer and continued to come in several weeks into his fall semester because he wanted to help. To me, this speaks volumes about the person Caleb is.

In conclusion, I believe Caleb would be a valuable asset to you and I strongly recommend him for your clerkship position. If you have any questions or would like to discuss Caleb further, please do not hesitate to contact me by telephone at 804-358-5855 ext. 1, or by email at [nrossner@ctlp.org](mailto:nrossner@ctlp.org).

Sincerely,



Nancy A. Rossner, Esq.  
Executive Director  
The Community Tax Law Project

**CALEB C. BRIGGS**

4643 Jennway Loop Moseley, VA 23120 | [caleb.briggs@richmond.edu](mailto:caleb.briggs@richmond.edu) | (804) 878-1283

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**WRITING SAMPLE**

The following writing sample is a recently revised Motion for Summary Judgment, which I originally wrote in my 1L Legal Analysis & Writing class. I received brief input from Professor Rachel J. Suddarth on my revisions.

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

<b>HOUSING OUR PITTSBURGH EQUITABLY, )</b>	)	
<b>ILEANA GARCIA,</b>	)	
and	)	
<b>MARSHALL JAMISON,</b>	)	
	)	
Plaintiffs,	)	Civil Action No. 22-00072
<b>v.</b>	)	
	)	
<b>CARING ABOUT NEIGHBORS,</b>	)	
	)	
Defendant.	)	

---

**I. INTRODUCTION**

Plaintiffs Ileana Garcia, Marshall Jamison, and Housing Our Pittsburgh Equitably (“HOPE”) respectfully request that this Court grant summary judgment in the above-named matter. Defendant violated the Fair Housing Act when it discriminatorily denied Plaintiffs Garcia and Jamison occupancy at its homeless shelter, Our Place, because of their national origin and race respectively. Section 3604(a) of the Fair Housing Act makes it unlawful to “make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.” 42 U.S.C.A. § 3604(a) (Westlaw through Pub. L. No. 118–3). Defendant concedes that it discriminatorily denied Garcia and Jamison occupancy at Our Place because of their national origin and race. Compl. ¶¶ 14–15; Ans. ¶¶ 14–15. Further, the undisputed facts show that Our Place is a dwelling under § 3604(a) of the Fair Housing Act. Therefore, there is no genuine issue of material fact as to the Defendant’s violation of the Fair Housing Act and summary judgment should be granted in favor of the Plaintiffs.

**II. STATEMENT OF FACTS**

Our Place is a homeless shelter operated by the Defendant in Pittsburgh, Pennsylvania. Compl. ¶ 8; Ans. ¶ 8. Defendant only permits members of the Caucasian race who were born in the United States to occupy Our Place. Compl. ¶ 11; Ans. ¶ 11. For instance, on December 17, 2021, Our Place denied Plaintiff Ileana Garcia shelter because of her national origin. Compl. ¶ 14; Ans. ¶



14. Specifically, when Garcia, who is of Mexican origin, sought shelter at Our Place, a volunteer turned her away, telling her, “Our Place is only for Americans.” Compl. ¶ 14; Ans. ¶ 14. Similarly, on December 20, 2021, Our Place denied Plaintiff Marshall Jamison shelter because of his race. Compl. ¶ 15; Ans. ¶ 15. Jamison, who is Black, was told by a shelter volunteer that there was “no room at [Our Place] for people like [him].” Compl. ¶ 15; Ans. ¶ 15. Unfortunately, these are not isolated incidents. In fact, Defendant trains its volunteers to enforce this discriminatory policy against individuals seeking shelter there. Compl. ¶ 12; Ans. ¶ 12. For instance, Defendant instructed volunteers that “Our Place only serves white people born and raised in the U.S.A.,” during a training session. Compl. ¶ 13; Ans. ¶ 13. As a result of the Defendant’s discriminatory policy, Plaintiffs Garcia and Jamison sought alternative shelter through HOPE. Fortunately, HOPE was able to expend its resources to assist Plaintiffs Garcia and Jamison in securing safe alternative housing.

In contrast with its treatment of minorities like Garcia and Jamison, Our Place has adopted welcoming and permissive policies for its Caucasian and American-born occupants. Our Place accommodates occupants for a maximum stay of 42 days in any given twelve-month period. Compl. ¶ 10(a); Ans. ¶ 10. Furthermore, Our Place assures occupants that they will receive the same bed each night, provided they notify staff of their intent to return. Compl. ¶ 10(b); Ans. ¶ 10. Additionally, Our Place encourages occupants to personalize their sleeping areas by providing them with a corkboard above their beds for pictures and other decorations. Compl. ¶ 10(c); Ans. ¶ 10. Our Place also provides occupants with a storage cabinet for personal items, located at their bedsides, and permits occupants to receive mail at the shelter. Compl. ¶ 10(d), (j); Ans. ¶ 10. Every night, Our Place volunteers prepare and serve a home-cooked meal for occupants to enjoy in the common dining room at their leisure. Compl. ¶ 10(e); Ans. ¶ 10. During the day, Our Place permits occupants to remain at the shelter to assist with “house chores.” Compl. ¶ 10; Ans. ¶ 10. Our Place also permits occupants to come and go from the shelter as they please. Compl. ¶ 10; Ans. ¶ 10.

On February 21, 2022, Plaintiffs filed a Complaint in this Court showing that Our Place has violated § 3604(a) of the FHA. On February 22, 2022, Defendant filed an Answer in which it conceded that it denied Plaintiffs Garcia and Jamison occupancy because of their national origin and race. Compl. ¶¶ 14–15; Ans. ¶¶ 14–15. Further, the undisputed facts show that Our Place is a dwelling. Compl. ¶¶ 10(a)–(j); Ans. ¶¶ 10. Accordingly, Plaintiffs now move for summary judgment, because the undisputed facts show that the Defendant violated § 3604(a) of the FHA.

### III. SUMMARY JUDGMENT STANDARD

Summary judgment shall be granted when the record shows that there is no genuine issue of material fact, and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *see also Hines v. Consol. Rail Corp.*, 926 F.2d 262, 267 (3d Cir. 1991). The party moving for summary judgment bears the initial burden of informing the court of the basis for its motion by identifying the aspects of the record which support its belief that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). After the moving party makes this initial showing, the burden then shifts to the nonmoving party to demonstrate that there is a genuine issue of material fact. *See Mathsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585–86 (1986); *United States v. 107.9 Acre Parcel of Land in Warren Twp.*, 898 F.2d 396, 398 (3d Cir. 1990) (citing *Mathsushita*, 475 U.S. 585, 586). The nonmoving party meets its burden by presenting sufficient evidence which could allow a reasonable jury to return a verdict in its favor. *E.g., Pignataro v. Port Auth. of N.Y. & N.J.*, 593 F.3d 265, 268 (3d Cir. 2010). While meeting its burden, the nonmoving party is entitled to all reasonable inferences in its favor. *Id.* However, if the nonmoving party fails to meet this burden, then summary judgment may be granted in favor of the moving party as a matter of law, because there is no genuine issue of material fact. Fed. R. Civ. P. 56(e)(3); *Celotex*, 477 U.S. 317, 323 (“The moving party is ‘entitled to a judgment as a matter of law’ because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.”).

There is an important distinction between the existence of some disputed facts and the existence of a genuine issue of material fact. *Am. Eagle Outfitters v. Lyle & Scott Ltd.*, 584 F.3d 575, 581 (3d Cir. 2009). There exists a genuine issue of material fact when “there is a sufficient evidentiary basis on which a reasonable jury could find for the nonmoving party and a factual dispute is material only if it might affect the outcome of the suit under governing law.” *Kaucher v. County of Bucks*, 455 F.3d 418, 423 (3d Cir. 2006) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248). While summary judgment may be properly precluded by a genuine dispute of material fact, a motion for summary judgment will not be defeated by “the mere existence of some disputed facts.” *Am. Eagle*, 584 F.3d at 581.

#### IV. ARGUMENT

##### I. THE PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE THE UNDISPUTED FACTS SHOW OUR PLACE IS A DWELLING FOR THE PURPOSES OF § 3604(A) OF THE FAIR HOUSING ACT

Summary judgment should be granted, because the undisputed facts show that Our Place is a dwelling under § 3604(a) of the FHA. Under § 3604(a), the FHA makes it unlawful to “make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.” 42 U.S.C.A. § 3604(a) (Westlaw through Pub. L. No. 118–3). The FHA defines dwelling for the purposes of this section as “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence[.]” *Id.* § 3604(b). The United States Department of Housing and Urban Development has adopted the same definition of dwelling in regulations implementing the FHA. 24 C.F.R. § 100.20 (2023). The meaning of this definition turns on the undefined term “residence.” *See id.*; § 3604(b). Accordingly, the Third Circuit developed a two-prong dwelling test (“the dwelling test”) to assess whether a facility constitutes a dwelling under the Fair Housing Act. *United States v. Columbus Country Club*, 915 F.2d 877, 881 (3d Cir. 1990). Under the dwelling test, a facility is a dwelling when: (1) “the facility is intended or designed for occupants who intend to remain in the facility for any significant period of time,” and

(2) “those occupants would view the facility as a place to return to during that period.” *Lakeside Resort Enters., LP v. Bd. of Supervisors of Palmyra Twp.*, 455 F.3d 154, 158 (3d Cir. 2006) (citing *Columbus*, 915 F.2d at 881).

Our Place satisfies both prongs of the dwelling test and is therefore a dwelling under the FHA. First, Our Place’s 42-day maximum intended stay shows the shelter is intended or designed for occupants who intend to remain in the facility for a significant period of time. Second, Our Place’s welcoming and permissive policies for its Caucasian and American-born occupants allow those occupants to view the facility as a place to return to during their stay. The undisputed facts show that Our Place satisfies both prongs of the dwelling test; therefore, there is no genuine issue of material fact as to Our Place’s status as a dwelling under the FHA. Thus, summary judgment in favor of the plaintiffs should be granted, because the uncontested facts show that Defendant discriminatorily denied Plaintiffs a dwelling in violation of § 3604(a) of the FHA.

A. Our Place’s 42-day maximum stay shows the shelter is intended or designed for occupants who intend to remain in the facility for a significant period of time.

Our Place satisfies the first prong of the dwelling test, because the shelter’s 42-day maximum intended stay shows that it is intended or designed for occupants who intend to remain there for a significant period of time. A facility is intended or designed for occupants who intend to remain there for a significant period of time when the maximum intended stay at the facility is longer than a “temporary sojourn or transient visit.” *See Lakeside* 455 F.3d at 157; *see also Smith v. Salvation Army*, No. 13-114-J, 2015 WL 5008261, at \*4, 5 (W.D. Pa. Aug. 20, 2015). A temporary sojourn or transient visit is akin to “a typical stay in a motel or bed and breakfast.” *Lakeside*, 455 F.3d at 159. Our Place’s 42-day stay would be atypical in a motel or bed and breakfast, and thus it is not akin to a temporary sojourn or transient visit. Therefore, Our Place’s maximum intended stay is longer than a temporary sojourn or transient visit, meaning Our Place satisfies the first prong of the dwelling test.

Our Place's 42-day maximum intended stay is longer than the 30-day maximum intended stay that the Third Circuit held to satisfy the first prong of the dwelling test in *Lakeside Resort Enterprises, LP v. Board of Supervisors of Palmyra Township*, 455 F.3d 154, 159 (3d Cir. 2006). In *Lakeside*, the court held the 30-day maximum intended stay was longer than a temporary sojourn or transient visit. 455 F.3d at 159. The court went on to explain that, even if the facility were evaluated according to its 14.8-day average stay, instead of according to its 30-day maximum intended stay, the facility would still satisfy the first prong of the dwelling test, because 14.8 days is "certainly longer than the typical stay in a motel or bed and breakfast[.]" *Id.* at 159. Our Place's 42-day maximum intended is longer than the 30-day maximum intended stay at the facility in *Lakeside*, and it is significantly longer than the 14.8-day average stay in *Lakeside*. *See id.* Thus, Our Place's 42-day maximum intended stay is also longer than the typical stay in a motel or bed and breakfast and is here longer than a temporary sojourn or transient visit.

Furthermore, Our Place's maximum intended stay is significantly longer than the transient three-day maximum intended stay in *Smith v. Salvation Army*, No. 13-114-J, 2015 WL 50008261, at \*5 (W.D. Pa. Aug. 20, 2015). In *Smith*, this Court held that the three-day maximum intended stay for occupants who were not residents of the local county was the length of a temporary sojourn or transient visit. 2015 WL 50008261, at \*5. Specifically, this Court explained that the three-day stay was akin to the typical stay in a motel or bed and breakfast. *Id.* Our Place's 42-day maximum intended stay is fourteen times longer than the maximum intended stay in *Smith*; therefore, it is significantly longer than typical stay at a motel or bed and breakfast. *See id.* Thus, Our Place's maximum intended stay is significantly longer than a temporary sojourn or transient visit. Accordingly, Our Place satisfies the first prong of the dwelling test, because Our Place's 42-day maximum intended stay demonstrates that Our Place is intended or designed for occupants who intend to remain there for a significant period of time.

B. Our Place’s welcoming and permissive policies for its exclusively Caucasian and American-born occupants allow them to view the shelter as a place to return to during their stay.

Our Place satisfies the second prong of the dwelling test, because its welcoming and permissive policies allow its exclusively Caucasian and American-born occupants to view the shelter as a place to return to during their stay. A facility’s occupants to view that facility as a place to return to during their stay when the facility’s policies allow occupants to feel “at home there.” *Lakeside*, 455 F.3d 154 at 159. Further, a facility’s policies allow occupants to feel at home when the facility provides occupants the same sleeping arrangements each night; allows occupants to personalize their sleeping space at the facility; allows occupants to maintain their personal belongings at the facility; allows occupants to receive mail at the facility; provides occupants meals at the facility; and permits occupants to remain at the facility or leave the facility at will. *See, e.g., id.* at 159–60; *Smith*, 2015 WL 50008261, at \*6.

Our Place’s occupants view the facility as a place to return to, because Our Place’s welcoming and permissive policies allow the occupants to feel at home there. For example, Our Place guarantees occupants the same bed each night for the duration of their stay, so long as they notify staff of their intent to return. Our Place even provides occupants with corkboards to personalize the space above their beds, as well as a storage cabinet to maintain their personal belongings near their bedsides. Furthermore, Our Place allows occupants to receive mail at the shelter. Every night, Our Place volunteers cook dinner for the occupants, who are invited to eat the meal together in a common dining room. Lastly, Our Place permits occupants to come and go from the shelter as they please.

Our Place’s policies are much more homelike than the policies at the facility in *Lakeside*, which the Third Circuit found “barely” satisfied the second prong of the dwelling test. 455 F.3d at 160. In *Lakeside*, the Third Circuit found a facility satisfied the second prong of the dwelling test, because the facility allowed occupants to hang pictures on the walls of their rooms, allowed

occupants to receive mail at the shelter, and allowed occupants to eat meals with each other. *Id.* at 159–60. The Third Circuit made this finding, even though the facility prohibited its occupants from leaving the premises without a supervisor, because the evidence showed that the occupants “treated [the facility] like home for the duration of their stays.” *Id.* at 160. Our Place shares many of the same policies as the facility in *Lakeside* that the court found to satisfy the second prong of the dwelling test, without restricting occupants who wish to leave the premises. *See id.* at 159–60. Thus, Our Place is much more homelike than the facility in *Lakeside* and should be found to satisfy the second prong of the dwelling test accordingly. *See id.*

Our Place’s policies are nothing like the policies in *Smith*, because the policies at Our Place do create a homelike environment. *See* 2015 WL 50008261, at \*6. In *Smith*, this Court held that the policies at the facility failed to create a homelike environment, and thus the facility failed the second prong of the dwelling test. *Id.* At the facility in *Smith*, occupants were assigned six to a room and slept in “military-style” bunkbeds. *Id.* Occupants were not guaranteed any spot at the facility at all, and the facility accommodated occupants on a first-come-first-serve basis. *Id.* Accordingly, the facility prohibited occupants from personalizing their sleeping areas. *Id.* The facility maintained a strict schedule that required occupants to depart for most of the day with their personal belongings. *Id.* The facility even discarded any personal items left unclaimed by occupants for one week. *Id.* Observing these policies, this Court noted that the facility “did not really treat the guests as if they would necessarily be returning the next night and required the guests to plan and act accordingly.” *Id.* Unlike the facility policies in *Smith*, Our Place guarantees occupants will sleep in the same bed each night of their stay, permits the personalization of space, allows for the storage of personal belongings, and allows the occupants to stay at the facility during the day, or come and go from the facility as they please. *See id.* Our Place treats its occupants as if they plan to return each night by implementing its homelike policies, which allow occupants to view the shelter as a place to return to

during their stay. Thus, the undisputed facts show that Our Place satisfies the second prong of the dwelling test.

## V. CONCLUSION

The Plaintiffs' Motion for Summary Judgment should be granted, because the undisputed facts show that Defendant has violated § 3604(a) of the Fair Housing Act, which makes it unlawful to "make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C.A. § 3604(a) (Westlaw through Pub. L. No. 118–3). Defendant concedes that it turned away Plaintiffs Garcia and Jamison because of their national origin and race respectively. Compl. ¶¶ 14–15; Ans. ¶¶ 14–15. Furthermore, the undisputed facts show Our Place satisfies the Third Circuit's dwelling test, thereby showing Our Place is a dwelling under § 3604(a). Specifically, Our Place satisfies the first prong of the dwelling test, because its 42-day maximum intended stay shows that the shelter is intended or designed for occupants who intend to remain there for a significant period of time. Additionally, Our Place satisfies the second prong of the dwelling test, because its welcoming and permissive policies allow occupants to view the shelter as a place to return to during their stay. Because there is no genuine issue of material fact concerning Defendant's violation of the Fair Housing Act, Plaintiffs respectfully request this Court grant summary judgment in their favor.

Date: April 15, 2022

Respectfully Submitted,




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Caleb C. Briggs (PA Bar No. 555)  
 STEVENS STEIN KIM, P.C.  
 987 Centre Avenue  
 Pittsburgh, PA 15217  
*Attorney for Plaintiffs*



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, via first class mail, postage prepaid, this 15th day of April 2022, to attorney for Defendant, Yvonne Jones, Jones Fellstrom, P.C., 456 Grant Avenue, Pittsburgh, PA 15217.

A handwritten signature in black ink, appearing to read "Caleb Briggs", is written in a cursive style.

**Applicant Details**

First Name **Michelle**  
 Middle Initial **E**  
 Last Name **Briney**  
 Citizenship Status **U. S. Citizen**  
 Email Address [meb392@cornell.edu](mailto:meb392@cornell.edu)

Address  
**Address**  
**Street**  
**107 E State Street**  
**City**  
**Ithaca**  
**State/Territory**  
**New York**  
**Zip**  
**14850**  
**Country**  
**United States**

Contact Phone Number **(203)228-8990**

**Applicant Education**

BA/BS From **Fordham University**  
 Date of BA/BS **May 2018**  
 JD/LLB From **Cornell Law School**  
<http://www.lawschool.cornell.edu>  
 Date of JD/LLB **May 11, 2024**  
 Class Rank **10%**  
 Law Review/Journal **Yes**  
 Journal(s) **LII Supreme Court Bulletin**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **Rossi**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/Externships **No**  
 Post-graduate Judicial Law Clerk **No**

## Specialized Work Experience

### Recommenders

Blume, John  
jb94@cornell.edu  
607-255-1030

Donovan, Margaret  
margaret.donovan@usdoj.gov  
2039019660

Fraser, Hilary  
htf4@cornell.edu

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

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Tuesday, June 27, 2023

The Honorable Jamar K. Walker  
U.S. District Court for the Eastern District of Virginia  
Walter E. Hoffman U.S. Courthouse  
600 Granby Street  
Norfolk, VA 23510

Dear Judge Walker,

I am a rising third-year law student at Cornell Law School, and am writing to apply for a clerkship in your chambers for the 2024-2025 term. My resume, transcript, law school grading policy, and writing sample are included in my application, along with letters of recommendation from Cornell professors John Blume and Hilary Fraser and AUSA Margaret Donovan, my internship supervisor last summer at the U.S. Attorney's Office for the District of Connecticut.

Please contact me at the above phone number or email address if you require additional information. Thank you for your time and consideration!

Sincerely,

Michelle Briney

Enclosures

**MICHELLE E. BRINEY**

107 E State Street, Apt. 413, Ithaca, NY 14850 • 203-228-8990 • me3392@cornell.edu

**EDUCATION****Cornell Law School**

Ithaca, NY

Juris Doctor anticipated

May 2024

GPA: 3.840 (Top 10%)Honors: Frederic H. Weisberg Prize in Constitutional Law; Dean's List (4 semesters); CALI Awards for Property, Professional Responsibility and Federal CourtsActivities: LII Supreme Court Bulletin, *Managing Editor*; Rossi Moot Court Competition, *Quarterfinalist*; Langfan First-Year Moot Court Competition, *Round of 32*; International Refugee Assistance Project; Public Interest Law Union; Women's Law Coalition**Fordham University**

Bronx, NY

Bachelor of Arts in History and Middle East Studies with Minor in Biology, *summa cum laude*

May 2018

GPA: 3.885Honors: Phi Beta Kappa; Phi Kappa Phi; Phi Alpha Theta (History Honors Society); Dean's List, First and Second Honors; Class of 1915 Prize (best debate speaker in Senior class)Activities: Fordham Debate Society, Ranked 8<sup>th</sup> Novice Speaker at 2016 Stanford Debate Tournament; Study Abroad for Area and Arab Languages in Amman, Jordan**EXPERIENCE****National Archives Office of General Counsel**

College Park, MD

*Summer Law Clerk*

Summer 2023

- Researched FOIA and FTCA claims for attorneys in the Archives' Office of General Counsel

**Capital Punishment Clinic, Cornell Law School**

Ithaca, NY

*Student Attorney*

Spring 2023

- Wrote portion of traverse submitted in support of client's federal habeas petition

**Afghan Assistance Clinic, Cornell Law School**

Ithaca, NY

*Student Attorney*

Fall 2022

- Assisted client in filing online I-589 Application for Asylum, including holding weekly meetings
- Researched Afghanistan country conditions, client's grounds for asylum, and legal precedent
- Wrote legal memo in support of client's application for asylum

**U.S. Attorney's Office, District of Connecticut**

New Haven, CT

*Summer Legal Intern*

May 2022–August 2022

- Researched and wrote memoranda on civil and criminal issues for Assistant U.S. Attorneys (AUSAs)
- Observed trials, proffer session, sentencing hearings and bond hearings led by AUSAs
- Appeared in court at sentencing hearing

**Barnes & Noble**

Waterbury, CT

*Bookseller*

November 2018–August 2021

- Assisted customers and routinely sold highest number of memberships per week
- Taught newer coworkers how to use cash registers and the store's lookup systems
- Reorganized and maintained history section to encourage browsing and increase findability

**Connecticut Institute for Refugees and Immigrants**

Hartford, CT

*Volunteer*

August 2018–March 2020

- Helped attorney and staff assist immigrant clients by organizing files and finding country condition information
- Wrote close file letters, cover letters, and responses to clients
- Received a CIRI Volunteer of the Year award for 2018

**INTERESTS**

Books by Terry Pratchett, Steven Sondheim musicals, Tang Soo Do karate (black belt)

Cornell Law School - Grade Report - 06/03/2023

**Michelle E Briney**

JD, Class of 2024

Course	Title	Instructor(s)	Credits	Grade	
--------	-------	---------------	---------	-------	--

**Fall 2021 (8/24/2021 - 12/3/2021)**

LAW 5001.2	Civil Procedure	Gardner	3.0	A	
LAW 5021.2	Constitutional Law	Rana	4.0	A	CALI
LAW 5041.3	Contracts	Rachlinski	4.0	A-	
LAW 5081.6	Lawyering	Stanley	2.0	B+	
LAW 5151.4	Torts	Schwab	3.0	A	

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	16.0	16.0	16.0	16.0	16.0	16.0	3.8337
Cumulative	16.0	16.0	16.0	16.0	16.0	16.0	3.8337

^ Dean's List

**Spring 2022 (1/18/2022 - 5/2/2022)**

LAW 5001.3	Civil Procedure	Reinert	3.0	A-	
LAW 5061.3	Criminal Law	Sood	3.0	A	
LAW 5081.6	Lawyering	Stanley	2.0	B+	
LAW 5121.3	Property	Underkuffler	4.0	A	CALI
LAW 6011.1	Administrative Law	Rachlinski	3.0	A-	

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	15.0	15.0	15.0	15.0	15.0	15.0	3.7786
Cumulative	31.0	31.0	31.0	31.0	31.0	31.0	3.8070

^ Dean's List

**Fall 2022 (8/22/2022 - 12/16/2022)**

LAW 6131.2	Business Organizations	Charles Whitehead	4.0	A-	
LAW 6263.1	Criminal Procedure - Adjudication	Blume	3.0	A	
LAW 6641.1	Professional Responsibility	Wendel	3.0	A+	CALI
LAW 7259.101	Faculty At Home Seminar: Constitutional Law in the News	Johnson	1.0	SX	
LAW 7790.301	Afghanistan Assistance Clinic I	Fraser/Sherman	4.0	A	

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	15.0	15.0	15.0	15.0	14.0	14.0	3.9764
Cumulative	46.0	46.0	46.0	46.0	45.0	45.0	3.8597

^ Dean's List

**Spring 2023 (1/23/2023 - 5/16/2023)**

LAW 6203.1	First Amendment: Speech and Press Clauses	Tebbe	3.0	B+	
LAW 6401.1	Evidence	K. Weyble	4.0	A	
LAW 6431.1	Federal Courts	Gardner	4.0	A	CALI
LAW 6437.1	Federal Practice and Procedure	Nathan	1.0	SX	
LAW 7811.301	Capital Punishment Clinic 1	Blume/Freedman/Knight	4.0	A-	

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	16.0	16.0	16.0	16.0	15.0	15.0	3.7780
Cumulative	62.0	62.0	62.0	62.0	60.0	60.0	3.8393

^ Dean's List

Total Hours Earned: 62



## Cornell Law School

Lawyers in the Best Sense

June 2023

### Cornell Law School Grading Policy for JD Students

Faculty grading policy calls upon each faculty member to grade a course, including problem courses and seminars, so that the mean grade for JD students in the course approximates 3.35 (the acceptable range between 3.2 and 3.5). This policy is subject only to very limited exceptions.

Due to the public health emergency, spring 2020 instruction was conducted exclusively online after mid-March and law school courses were graded on a mandatory Satisfactory/Unsatisfactory basis. No passing grade received in any spring 2020 course was included in calculating the cumulative merit point ratio.

### Class Rank

As a matter of faculty policy, we do not release the academic rankings of our students. Interested individuals, including employers, have access to the top 10% approximate cumulative grade point cut off or the most recent semester of completion. In addition, at the completion of the students second semester and every semester thereafter the top 5% approximate cumulative grade point average is also available. In general students are not ranked however the top ten students in each class are ranked and are notified of their rank.

#### Class of 2023 [six semesters]:

5% - 3.9204; 10% - 3.8364

#### Class of 2024 [four semesters]:

5% - 3.9048; 10% - 3.7897

#### Class of 2025 [two semesters]:

5% - 3.9475; 10% - 3.8350

### Dean's List

Each semester all students whose **semester** grade point average places them in the top 30% of their class are awarded Dean's List status. Students are notified of this honor by a letter from the Dean and a notation on their official and unofficial transcripts.

### Myron Taylor Scholar

This honor recognizes students whose cumulative MPR places them in the top 30 percent of their class at the completion of their second year of law school. Students are notified of this honor by a letter from the Dean of Students.

### Academic Honors at Graduation

The faculty awards academic honors at graduation as follows: The faculty awards the J.D. degree summa cum laude by special vote in cases of exceptional performance. The school awards the J.D. degree magna cum laude to students who rank in the top 10% of the graduating class. Students who rank in the top 30% of the class receive the J.D. degree cum laude unless they are receiving another honors degree. For the graduating Class of 2023, the GPA cut off for magna cum laude was 3.8364 and for cum laude was 3.6627. Recipients are notified by a letter from the Dean and a notation on their official and unofficial transcripts.

**The Order of the Coif** is granted to those who rank in the top 10% of the graduating class. To be eligible for consideration for the Order of the Coif, a graduate must be in the top 10% with 75% of credits taken for a letter grade.

Prior to fall 2018, faculty who announced to their classes that they might exceed the cap were free to do so. If the 3.5 cap was exceeded in any class pursuant to such announcement, the transcript of every student in the class will carry an asterisk (\*) next to the grade for that class, and for various internal purposes such as the awarding of academic honors at graduation, the numerical impact of such grades will be adjusted to be the same as it would have been if the course had been graded to achieve a 3.35 mean.

For detailed information about exceptions and other information such as grading policy for exchange students please go to the Exam Information & Grading Policies link at <http://www.lawschool.cornell.edu/registrar>.



June 12, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am the Samuel F. Leibowitz Professor of Trial Techniques at Cornell Law School and the Director of the Cornell Death Penalty Project. Michelle was a student in my Criminal Procedure class during the fall of 2022 and in the Capital Punishment Clinic during the spring 2023 semester. She also served as my Research Assistant during the spring 2023 semester. Thus I have observed her work in a variety of different contexts and, therefore, I have a good vantage point to comment on her qualifications to be a judicial clerk.

In Criminal Procedure, Michelle was one of the stars of the class. She was very active in the class discussions (in a good way), and displayed, on a number of occasions, the ability to tease apart a complex doctrinal problem. She was a joy to have in class and always moved the class discussion forward. On the final examination, she did an excellent job, and received the third highest grade (out of 90 students) and thus received an A for the course. I worked more closely with Michelle in the Capital Punishment Clinic and when she was my RA. In the clinic, Michelle was assigned to a team tasked with drafting a Traverse in a federal habeas case on behalf of a death row inmate. More specifically, Michelle was assigned to work on a claim alleging ineffective assistance of counsel for failing to develop and present evidence supporting the client's consistent assertion that the homicide was an accident and not murder. Michelle did an excellent job. Habeas corpus can be overwhelming at times for students (and lawyers), as they are required to not only analyze whether the claim was meritorious, but also whether the state court's merits' decision was objectively unreasonable. Again, her ability to analyze a set of complex legal problems and to present her analysis clearly and concisely came through. These qualities and skills will serve Michelle well as a judicial clerk. As my RA, she assisted in updating an Evidence Book that I co-author with several other professors (*A Modern Approach to Evidence*). She was assigned to review on the Chapters and do an initial analysis of needed updates, etc. As was true in my other experiences with Michelle, she did an excellent job. Her research was thorough and thoughtful and she completed all her assignments in a timely fashion.

Michelle is also very personable. She was an excellent team member in the clinic and as an RA. She is a bit quirky, but in a good way, as she realizes it and is quick to poke fun at herself in an endearing way. She will definitely get along well her co-clerks and the administrative staff in your chambers.

Michelle has an excellent overall record at Cornell, and is one of our top students. She is in the top 10% of the class, has received a number of CALI awards (including the CALI in Federal Courts, one of the most difficult classes at Cornell Law School) and the Weisberg Prize on Constitutional Law. Her excellence in the classroom is even more impressive when you take into account that she is very involved in extracurricular activities including LII Supreme Court Bulletin, Moot Court, the Women's Law Coalition, the Public Interest Law Union and the Refuge Assistance Project.

Michelle wants to clerk because she believes that not only will she have another year to hone her research and writing skills under a judge's mentorship, but also to get exposure to different areas of law in a practical way. As someone who plans on a career in public service, clerking will provide her with an opportunity to evaluate her career options.

I sum, I give Michelle my highest recommendation. I have no doubt that she has the intelligence, legal research and writing skills, and personality to be an outstanding judicial clerk. Please do not hesitate contact me if I can provide you with any additional information. I can be reached at [jb94@cornell.edu](mailto:jb94@cornell.edu), or my cell phone is (803) 240-6701.

Very truly yours,

John H. Blume  
*Samuel F. Leibowitz Professor of Trial Techniques  
and Director of the Cornell Death Penalty Project*

John Blume - [jb94@cornell.edu](mailto:jb94@cornell.edu) - 607-255-1030





**United States Department of Justice**

*United States Attorney  
District of Connecticut*

*Connecticut Financial Center  
157 Church Street, 25th Floor  
New Haven, Connecticut 06510*

*(203) 821-3700  
Fax (203) 773-5376  
[www.justice.gov/usao-ct](http://www.justice.gov/usao-ct)*

February 15, 2023

Re: Letter of Recommendation for Ms. Michelle Briney

Greetings:

I am writing to give my wholehearted recommendation that Ms. Michelle Briney be offered a position with your chambers as a law clerk. For the reasons discussed below, I believe that Michelle would be a valuable addition to your courtroom.

Michelle has already proven herself as a member of the Department of Justice; indeed, I first came to know her through her participation in my Office's own 2022 Summer Internship Program, for which I am the program coordinator. Throughout the DOJ internship, Michelle established herself as someone who my colleagues could rely on for timely, responsive assistance. If she is given another opportunity to contribute to the federal justice system, I have every reason to believe that your chambers will have a similar positive experience.

Michelle displayed solid legal research and writing skills while with the District of Connecticut. Beginning at the very start of the summer, she proved her reliability by providing prompt and thorough assistance on a time-sensitive criminal appellate issue. She also conducted important research in support of a motion to suppress and ran to ground key evidentiary issues for an AUSA who was preparing for trial. It is worth noting that, in addition to her contributions to our Criminal Division, Michelle also volunteered for an assignment with our Civil Division that involved research into a local university's compliance with the Americans with Disabilities Act. Her interest and enthusiasm for all aspects of federal litigation made her a particularly enjoyable intern for AUSAs to work with on assignments. In my unconditional opinion, it also makes her particularly well-qualified to serve as a federal law clerk.

I observed Michelle's work ethic and professional demeanor firsthand when she assisted with one of my own cases. Michelle not only created a first draft of a sentencing memorandum in a drug trafficking case—which I ultimately filed with minimal editing—but she also appeared on the record for the United States at the sentencing hearing itself. She flawlessly presented a key portion of the government's sentencing argument in front of a district court judge. The significance of having a summer intern assist with this type of proceeding is indicative of the level of trust that my colleagues and I could place in Michelle. She was, of course, thoroughly prepared for this serious responsibility.

*Page 1 of 2*

On a more personal level, Michelle is both likeable and appropriately humble. She quickly bonded with her fellow interns and was a genuine pleasure to interact with, both in the office and during our summer program's social events. In terms of her maturity and professionalism, I had full faith that she could be entrusted with representing the United States on the record, as detailed above. It is exactly these qualities that make me confident she would be an excellent clerk. And of course, as I am sure you can review from her transcripts, her academic achievements are remarkable.

I would be happy to discuss Michelle's qualifications in further detail. Please do not hesitate to contact me through any of the means of communication in my signature block.

Sincerely,



MARGARET M. DONOVAN  
ASSISTANT UNITED STATES ATTORNEY  
United States Attorney's Office  
District of Connecticut  
157 Church Street, 25th Floor  
New Haven, CT 06510  
Office: (203) 821-3819  
Cell: (203) 901-9660  
[margaret.donovan@usdoj.gov](mailto:margaret.donovan@usdoj.gov)

June 12, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Michelle Briney for a position as a judicial clerk.

Michelle was a second-year law student in my clinical course, Afghanistan Assistance Clinic, LAW 7790 at Cornell Law School, Fall 2022.

This course required students to work with Fulbright scholars recently arrived from Afghanistan to prepare and file affirmative asylum applications with the U.S. Citizenship and Immigration Service ("USCIS"). As clients, the Afghan scholars presented with trauma, grief and fear, and were sometimes overwhelmed to the point of passivity. To represent these clients effectively, students had to quickly learn to elicit with sensitivity stories of horrific mistreatment, plus learn enough of Afghanistan's culture, history, politics, governance and religion to form a coherent context for the client's personal narrative, and learn the basics of asylum law. An additional challenge was deciphering USCIS's filing requirements in the newly implemented online filing portal together with a rapidly evolving patchwork of U.S. immigration benefits programs affecting Afghan nationals.

The work product each student produced described a unique client and included a 10 to 20 page declaration or personal narrative of the client, an annotated document index of 50 or more documents, a legal brief and a 15-page government form. In sum, students faced significant pressure to research and produce a winning case of immeasurable value to their clients at a time of unsettled policies and facts regarding Afghanistan.

In this intense environment, Michelle Briney succeeded with ease. Michelle was an enthusiastic learner, digging into law and fact issues with vigor. She was also tireless in her support and commitment to her client. In this class, I felt that I knew Michelle's client best, because Michelle knew her client best and crafted her fact and law-based argument on her client's behalf so effectively. The declaration Michelle wrote with her client is an exemplary document that has potential to be de-identified and released as a powerful literary piece.

Similarly, Michelle's document index includes approximately 50 articles she found that squarely corroborate her client's claim. The legal memo is well researched and clear. As a person, Michelle is confident and unabashed, while being entirely receptive and social. I have the sense that she does her very best work on each assignment. Immigration cases and clinical courses lend themselves to team work. Michelle got along well with classmates, sharing her research discoveries and being respectful of classmates' perspectives. In class lecture, Michelle regularly contributed analytical comments and questions.

Based on my observations of Michelle Briney in this course, I believe she would be highly effective as a judicial clerk. Her easy management of a heavy caseload and level-headed approach to complex, new material may be valued in a judicial setting.

If I may be of further assistance, please do not hesitate to contact me.

Hilary T. Fraser, Esq.

*Adjunct Professor*  
Afghanistan Assistance Clinic  
Cornell Law School

Hilary Fraser - htf4@cornell.edu

**MICHELLE E. BRINEY**

107 E State Street, Apt. 413, Ithaca, NY 14850 • 203-228-8990 • meb392@cornell.edu

**Writing Sample**

This writing sample is a memorandum of law I wrote during my Summer 2022 internship with the Connecticut Office of the U.S. Attorney in New Haven, Connecticut. It concerns the application of Rule 16(a)(1)(B)(i) of the Federal Rules of Criminal Procedure.

My internship supervisor at the CT USAO has approved my use of this memo as a writing sample. Some identifying information has been anonymized for confidentiality; I have signaled these changes by placing them in double brackets. Otherwise, my work has not been edited by anyone else.

**QUESTION PRESENTED**

Under Federal Rules of Criminal Procedure 16(a)(1)(B)(i), which requires the government to disclose any statements in its possession, custody, or control made by the defendant, if the attorney for the government knows or could have known through due diligence that the statement exists, was the government required to find and disclose an additional recording [[made by a third party, which the government had not known about?]]

**BRIEF ANSWER**

Probably not. The due diligence requirement of Rule 16(a)(1)(B)(i) only applies to recordings of the defendant that are in governmental custody, possession, or control. Prosecution and defense agree the relevant recording was not in governmental possession, custody, or control. Therefore, the government was not required to use due diligence under Rule 16(a)(1)(B)(i).

**ANALYSIS**

Rule 16(a)(1)(b)(i) of the Federal Rules of Criminal Procedure probably did not require the prosecution to find the additional recording. The government's Rule 16 and *Brady* obligations apply only to documents in the government's possession, custody, or control. The prosecutor is assumed to have constructive knowledge of all statements in the government's possession, and thus must exercise due diligence to find and disclose information under government control. However, there is no due diligence requirement for parties not under government control or part of the "prosecution team," even if the government should have known the evidence might exist. Thus, there was probably no obligation to find the recording, as both sides agree the recording was not in the government's possession, custody, or control.

The government's Rule 16 and *Brady* obligations only apply to documents within governmental possession, custody, or control. Fed. R. Crim. P. 16; *United States v. Brennerman*, 818 Fed. App'x 25, 29 (2d. Cir. 2020). Under Rule 16(a)(1)(B)(i), the government must disclose to defendants relevant recorded statements if the statements meet two conditions: the government's attorney knows or could know of the statement through due diligence, *and* the statement is within the government's possession, custody or control. Fed. R. Crim. P. 16(a)(1)(B)(i). Similarly, both *Brady* and Rule 16(a)(1)(E) require the government provide the defense with evidence in its possession that is material to the defense's case. Fed. R. Crim. P. 16(a)(1)(E); *see also United States v. Chalmers*, 410 F.Supp.2d 278, 287 (S.D.N.Y. 2006). The definition of governmental possession, custody, and control is the same for all Rule 16 requests. *See United States v. Volpe*, 42 F. Supp. 2d 204, 221 (E.D.N.Y. 1999) (comparing Rule 16(a)(1)(A) and 16(a)(1)(C); *United States v. Stein*, 488 F.Supp.2d 350, 360-61 (S.D.N.Y. 2007). There is debate in the Second Circuit over the degree of similarity between Rule 16 and *Brady*; Rule 16's discovery obligations are arguably broader than those of *Brady*. *See United States v. Meregildo*, 920 F. Supp. 2d 434, 443 (S.D.N.Y. 2013). However, most courts apply the "prosecution team" standard to both Rule 16 and *Brady*: evidence must only be disclosed if it is within the possession, custody or control of "a government agency so closely aligned with the prosecution...as to be...part of the prosecution team." *United States v. Finnerty*, 411 F.Supp.2d 428, 432 (S.D.N.Y. 2006); *see also Chalmers*, 410 F.Supp.2d at 289 ("[T]he Court is not persuaded that 'government' for purposes of Rule 16 should be any broader than the 'prosecution team' standard...adopted in...*Brady*"). Under both *Brady* and Rule 16, the government has no responsibility to obtain items not under its control. *See Brennerman*, 818 Fed. App'x at 29 ("The government's discovery and disclosure obligations extend only to information and documents in

the government's possession."); *United States v. Tomasetta*, No. 10 Cr. 1205, 2012 WL 896152 at \*5 (S.D.N.Y. Mar. 16, 2012) ("Since the [Rule 16] materials...were outside of the government's control, it had no Rule 16 obligation to discover or obtain these materials").

The government is required to use due diligence to obtain recordings and exculpatory evidence in its possession. Fed. R. Crim. P. 16(a)(1)(B)(i); *United States v. Avellino*, 136 F.3d 249, 255 (2d Cir. 1998). The government's discovery obligations only apply to evidence that is known to the prosecutor. *Avellino*, 136 F.3d at 255. However, "an individual prosecutor is presumed...to have knowledge of all information gathered in connection with his office's investigation." *Id.* The due diligence requirement stems from this constructive knowledge—thus prosecutors have "a duty to learn of any favorable evidence known to the others acting on the government's behalf." *Id.* This prevents prosecutors from having their cake and eating it too—the prosecution cannot have easy access to relevant evidence *and* avoid disclosure because the evidence is technically held by another agency. *See United States v. Giffen*, 379 F.Supp.2d 337, 342 (S.D.N.Y. 2004). While the prosecution cannot be "willfully blind" to information it holds, it does not have a duty to learn about information it does not possess and does not have constructive knowledge of. *Meregildo*, 920 F.Supp.2d at 445. "In the Second Circuit, a prosecutor's constructive knowledge only extends to...the prosecution team." *Id.* at 440-41. Thus, Rule 16 does not apply if individuals are not part of or controlled by agencies involved in the case. *See id.*

There is no due diligence requirement for information from third parties that are neither under the control of the government nor part of the prosecution team. *See United States v. Hutcher*, 622 F.2d 1083, 1088 (2d Cir. 1980). In *United States v. Finnerty*, the court considered a Rule 16 request for a New York Stock Exchange (NYSE) internal study. *Finnerty*, 411

F.Supp.2d at 432. This study was in the possession of the NYSE; while the NYSE had previously provided documents to the government, the government had not seen or reviewed this study. *Id.* The court denied the request, ruling that Rule 16 only applied if the NYSE was a government agency involved in a joint investigation. *Id.* at 432-33. Because it was neither, the government had no obligation to obtain the study. *Id.* at 434.

Similarly, the government is usually not responsible for incomplete information produced by subpoenaed or cooperating witnesses and third parties. *United States v. Weaver*, 992 F.Supp.2d 152, 157 (E.D.N.Y. 2014). Third party information might be under government control when there is a legal agreement allowing the government unqualified access. *See Stein*, 488 F.Supp.2d at 362-64 (granting a Rule 16(a)(1)(E) request because the company that held the information had signed a Deferred Prosecution Agreement). However, in *United States v. Weaver*, defendants requested production of “any and all documents” possessed by cooperating witnesses. 992 F.Supp.2d at 157. The court ruled the government’s obligations were satisfied by a broad request for information from each witness, even if the witnesses provided incomplete information. *Id.* It stated that “[t]o the extent that the cooperating witnesses withheld [relevant] documents...from the government in response to its request, the government is not required to produce such documents.” *Id.* As long as the government turned over any subsequent information received from witnesses, it had no additional Rule 16 or *Brady* obligations. *Id.* Similarly, the court in *United States v. Tomasetta* said that “documents in the hands of cooperating third parties are not attributable to the government.” 2012 WL 896152 at \*4. In *Tomasetta*, the government issued several subpoenas, and stated it gave defendants all the information received. *Id.* at \*1, \*4. While the government knew relevant notebooks by a key witness might exist, the notebooks were not given to the government until the eve of trial. *Id.* at



\*2-3. Once the government possessed the notebooks, it promptly disclosed them to the defense. *Id.* The court ruled the failure to discover the notebooks earlier did not violate Rule 16. *Id.* at \*5. Documents that must be subpoenaed are not controlled by the government, and the government had no obligation to discover materials not in its control. *Id.*; see also *Brennerman*, 818 Fed. App’x at 29 (saying the government fulfilled *Brady* by turning over every document received from a bank, even though the documents did not include exculpatory personal notes); *United States v. Villa*, No. 3:12cr40, 2014 WL 280400 (D. Conn. Jan. 24, 2014) (“To the extent that Defendant seeks documents in the possession or control of Eli Lilly rather than the government, it appears that *Brady* and Rule 16 do not require [government disclosure]”).

This standard probably applies even if the government suspected or should have known that the third party held additional relevant information. See *Tomasetta* 2012 WL 896152 at \*2. In *Tomasetta*, the government was aware for several months that the notebooks could exist, and did not follow up on a subpoena asking for the notebooks. *Id.* The court said that, while the government *should* have acted sooner, it fulfilled Rule 16 by promptly producing the notebooks once it possessed them. *Id.* at \*5-6. Similarly, in *United States v. Hatcher*, defendant argued the government was required to provide contradictory statements made by a witness in a previous trial. 622 F.2d at 1088. The Court rejected the argument, stating that the trial testimony was possessed by the district court and thus not controlled by the prosecution. *Id.* It made this ruling even though the prosecution had obtained and disclosed the previous trial’s docket sheet—which would have notified the prosecution that the district court’s records held more information about the witness. See *id.* Finally, in *United States v. Avenatti*, Avenatti argued the government had deliberately failed to gain information from servers held by a bankruptcy trustee, despite knowing of their importance to the case. No. 19-CR-374, slip op. at 12 (S.D.N.Y. Feb. 15, 2022).

He also argued that, under Rule 16, the U.S. Attorney’s Office prosecuting him should have obtained server information held by a U.S. Attorney’s Office in California, which was prosecuting a separate case against Avenatti. *Id.* at 2, 6. The court rejected both Avenatti’s arguments. *Id.* at 11-12. It said the California U.S. Attorney’s Office was not part of the prosecution team under Rule 16, and that the government had no duty to try to obtain information it did not possess. *Id.* Thus, *Brady* and Rule 16 “[did] not require the Government to make efforts to “acquire” the Servers from the Bankruptcy Trustee or anyone else.” *Id.* at 12.

### CONCLUSION

The government probably did not violate Rule 16(a)(1)(B)(i), because it was not required to use due diligence when collecting [[the third party’s]] tapes. Rule 16’s requirements only apply to documents in the government’s possession, custody, or control. Both sides agree the tapes were never in governmental possession, custody, or control. Thus, the government was not required to conduct due diligence. As in *Finnerty*, *Weaver*, and *Tomasetta*, the [[materials]] were held by a third party that was not a governmental agency or part of the prosecution team. *Finnerty*, 411 F.Supp.2d at 433; *Weaver*, 992 F.Supp.2d at 157; *Tomasetta*, 2012 WL 896152 at \*5. There was no legal agreement with the government to produce information. *Tomasetta*, 2012 WL 896152 at \*5. Like *Weaver* and *Tomasetta*, the reason the government did not obtain the recording earlier is because the third party gave incomplete information. *Id.* at \*2; *Weaver*, 992 F.Supp.2d at 157. Arguably, the prosecution should have known that additional recordings existed. However, in *Tomasetta*, *Hutcher*, and *Avenatti*, the government did not have an obligation to obtain additional information, even if had reason to believe additional information existed. *Tomasetta*, 2012 WL 896152 at \*6; *Hutcher*, 622 F.2d at 1088; *Avenatti*, No. 19-CR-374, slip op. at 12 (S.D.N.Y. Feb. 15, 2022). Thus, Rule 16(a)(1)(B)(i) due diligence only applies

once evidence is controlled by the government. As long as the government promptly disclosed the recording once it obtained it, it probably fulfilled its disclosure obligations.

## Applicant Details

First Name	Emani
Last Name	Brown
Citizenship Status	U. S. Citizen
Email Address	<a href="mailto:emani.brown@utexas.edu">emani.brown@utexas.edu</a>
Address	<div>Address</div> <div>Street</div> <div>4600 Mueller Blvd, Apt 2104</div> <div>City</div> <div>Austin</div> <div>State/Territory</div> <div>Texas</div> <div>Zip</div> <div>78723</div> <div>Country</div> <div>United States</div>
Contact Phone Number	915-926-9087

## Applicant Education

BA/BS From	Rice University
Date of BA/BS	May 2021
JD/LLB From	The University of Texas School of Law
	<a href="http://www.law.utexas.edu">http://www.law.utexas.edu</a>
Date of JD/LLB	May 4, 2024
Class Rank	School does not rank
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	No

## Bar Admission

## Prior Judicial Experience

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	No

## Specialized Work Experience

### Recommenders

Davis, Jacquelyn  
Jdavis@trla.org  
Sifuentes Davis, Lia  
lia.davis@law.utexas.edu  
(512) 232-7222  
Mason, Lori  
lmason@law.utexas.edu  
5126988439

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**Ms. Lawryn Emani Brown**

4600 Mueller Blvd, Austin, TX 78723 | 915-926-9087 | emani.brown@utexas.edu

June 12, 2023

The Honorable Jamar Walker  
United States District Court  
Eastern District of Virginia  
Walter E. Hoffman United States Courthouse  
600 Granbury Street  
Norfolk, Virginia 23510

Dear Judge Walker:

I am currently a second-year student at the University of Texas School of Law, and I am pleased to apply for a clerkship position in your chambers for the 2024-term. It is my wish to work as a public interest litigator after I graduate, so I am particularly interested in clerking for you because of your vast experience in litigation.

Throughout my life I have overcome adversity through hard work, determination, and the support of my family, friends, and mentors. I will not only contribute to your chambers by my demonstrated work ethic and research and writing abilities, but also my multicultural background. As a Black and Mexican-American woman raised in the binational community of El Paso, Texas, I have always known that as an attorney, I want to serve the communities that raised me – the Black and Latinx communities. It is my goal to use my law degree to connect with, advocate for, and empower marginalized communities across the nation.

My application includes a resume, transcript, and writing sample. Letters of recommendations by Mrs. Jacquelyn Davis, Professor Lori Mason, and Professor Lia Sifuentes Davis are included. These recommenders may be reached as follows:

- Jacquelyn Davis, Texas RioGrande Legal Aid, JDavis@trla.org, 512-374-2756
- Professor Lori Mason, The University of Texas School of Law, LMason@law.utexas.edu, 512-232-1335
- Professor Lia Sifuentes Davis, The University of Texas School of Law, Lia.Davis@law.utexas.edu, 512-232-7222

In addition, the Law School's clerkship advisor, Kathleen Overly, is available to answer your questions. You may reach her at koverly@law.utexas.edu or 512-232-1316. If I may provide any additional information, please contact me.

Thank you for your time and consideration.

Respectfully,

Emani Brown

**Ms. Lawryn Emani Brown**

4600 Mueller Blvd, Austin, TX 78723 | 915-926-9087 | emani.brown@utexas.edu

**EDUCATION**

**The University of Texas School of Law**, Austin, TX

J.D. expected May 2024

GPA: 3.19

- TEXAS HISPANIC JOURNAL OF LAW AND POLICY, *Submissions Editor*
- William Wayne Justice Center, *Public Service Scholar*
- Chicano and Hispanic Law Students Association, *Alumni Chair*; and Thurgood Marshall Legal Society, *Member*
- Gender Violence Law Caucus, *Co-founder*
- Pro Bono Scholar: Parole Packet Representation; Pro Bono in January, *Texas Advocacy Project Intern*
- Law Students 4 Black Lives, Student Achievement Scholarship Recipient
- National Association of Women Judges, Access to Justice Scholarship Recipient

**Rice University**, Houston, TX

B.A. *magna cum laude* in Psychology; Study of Women, Gender, and Sexuality received May 2021

GPA: 3.93

- Black Student Association, *President* (2020- 21); *Gala Coordinator* (2019- 20); Outstanding Senior Award
- Loewenstern Fellow, Center for Civic Leadership (2020-2021)
- Diversity Council, Jones Residential College, *Co-founder* and *Co-chair* (June 2020-May 2021)
- Teaching Assistant, Introduction to Cognitive Psychology (September 2019-December 2019)
- Research Assistant, WorKing Resilience Lab (September 2018-May 2019)

**EXPERIENCE**

**ACLU of Texas**, Houston, TX

*Law Clerk*, June 2023-August 2023 (expected)

**Volunteer Legal Services**, Austin, TX

*Scott Ozmun Fellow*, August 2022-May 2023

Responsible for conducting applicant intakes and placing cases with pro bono attorneys.

**Texas RioGrande Legal Aid**, Austin, TX

*Law Clerk in Family Law/Domestic Violence Team*, May 2022-August 2022

Drafted documents for clients; assisted with trial prep; conducted legal research.

**Full Circle Strategies Consulting Agency**, Houston, TX

*Research Analyst Intern*, June 2020-August 2020

Engaged in strategy, research, and program development concerning anti-racism, diversity, equity, and inclusion.

**Center of Study of Women, Gender, and Sexuality**, *Rice University*, Houston, TX

*Seminar and Practicum in Engaged Research*, September 2019-May 2020

Collaborated with the Tahirih Justice Center in Houston and researched issues of gender, violence, and immigration; presented “Documenting Fears Among Latinx Immigrant Survivors of Gender-Based Violence.”

**Texas Criminal Justice Coalition**, Houston, TX

*Intern*, September 2019-December 2019

Conducted policy research regarding bail/pretrial practices and ways to reduce mass incarceration in Texas.

**Origins of Social Cognition Lab**, *Yale University*, New Haven, CT

*REU Intern*, June 2019-August 2019

Collected data in the Social Cognitive Development Lab and the Canine Cognition Lab. Presented “Children’s Affiliation Predictions when Shared Preferences and Group Membership Conflict” at the Yale Inter-Developmental Poster Session.

**Dr. James Schutte**, *Forensic Psychologist*, El Paso, TX

*Intern*, May 2018-August 2018

Conducted mental status interviews and psychological testing with patients; researched for criminal court.

**LANGUAGE & INTERESTS**

Native in Spanish; Enjoy cooking traditional Mexican food and lap swimming for physical and mental wellbeing

*Prepared on June 2, 2023*



# THE UNIVERSITY OF TEXAS SCHOOL OF LAW

UNOFFICIAL TRANSCRIPT PRINTED BY STUDENT

PROGRAM: Juris Doctor

OFFICIAL NAME: BROWN, LAWRYN E.

PREFERRED NAME: Brown, Lawryn E.

DEGREE: in progress seeking JD TOT HRS: 59.0 CUM GPA: 3.19

						HOURS ATTEMPT	HOURS PASSED	EXCLUDE P/F	SEM AVG
FAL 2021	427	TORTS	4.0	B	WEW				
	332R	LEGAL ANALYSIS AND COMM	3.0	B+	LRM				
	531	PROPERTY	5.0	B	MFS	FAL 2021	16.0	16.0	3.06
	423	CRIMINAL LAW I	4.0	B	GBS	SPR 2022	30.0	30.0	2.93
SPR 2022	421	CONTRACTS	4.0	B+	OB	FAL 2022	44.0	44.0	3.39
	232S	PERSUASIVE WRTG AND ADV	2.0	B+	SJP	SPR 2023	59.0	59.0	3.57
	433	CIVIL PROCEDURE	4.0	C+	AMD				
	434	CONSTITUTIONAL LAW I	4.0	B	WEF				
FAL 2022	483	EVIDENCE	4.0	B+	GBS				
	383C	CRIMINAL PROCDR: BAIL T	3.0	A-	JEL				
	385	PROFESSIONAL RESPONSIBI	3.0	B+	LDW				
	387D	ADVOCACY SURVEY	3.0	B+	DMG				
	187E	ADVOCACY SURVEY: SKILLS	P/F	1.0	CR	MFB			
SPR 2023	389C	FAMILY LAW	3.0	A-	SHW				
	697C	CLINIC: CIVIL RIGHTS	P/F	6.0	CR	LSD			
	396W	STATUTORY INTERPRETATIO	3.0	B	BAP				
	397S	SMNR: RACE PERSPCT FUTU	3.0	A	LNM				



## EXPLANATION OF TRANSCRIPT CODES

### GRADING SYSTEM

LETTER GRADE	GRADE POINTS
A+	4.3
A	4.0
A-	3.7
B+	3.3
B	3.0
B-	2.7
C+	2.3
C	2.0
D	1.7
F	1.3

Effective Fall 2003, the School of Law adopted new grading rules to include a required mean of 3.25-3.35 for all courses other than writing seminars.

#### Symbols:

Q	Dropped course officially without penalty.
CR	Credit
W	Withdrew officially from The University
X	Incomplete
I	Permanent Incomplete
#	Course taken on pass/fail basis
+	Course offered only on a pass/fail basis
*	First semester of a two semester course

A student must receive a final grade of at least a D to receive credit for the course. To graduate, a student must have a cumulative grade point average of at least 1.90.

### COURSE NUMBERING SYSTEM

Courses are designated by three digit numbers. The key to the credit value of a course is the first digit.

101	-	199	One semester hour
201	-	299	Two semester hours
301	-	399	Three semester hours
401	-	499	Four semester hours
501	-	599	Five semester hours
601	-	699	Six semester hours

### SCHOLASTIC PROBATION CODES

SP	=	Scholastic probation
CSP	=	Continued on scholastic probation
OSP	=	Off scholastic probation
DFP	=	Dropped for failure
RE	=	Reinstated
EX	=	Expelled



William Marsh Rice University  
Houston, TX 77005

Student No: S01258649

Date of Birth: 30-NOV-1999

Date Issued: 03-JUN-2023 OFFICIAL

Record of : Lawryn Emani Brown

23 Sunset Blvd  
Houston, TX 77005

Issued To : LAWRYN EMANI BROWN

Course Level : Undergraduate

**Current Program**

Major:

Psychology

Stdy of Womn Gendr & Sexuality

**Degree Information:**

Degree Awarded: Bachelor of Arts 15-MAY-2021

Major:

Psychology

Stdy of Womn Gendr & Sexuality

Inst. Honors:

magna cum laude

Subj	No.	Title	Cred	Grade	Pts	R
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**TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:**

Fall 17 Advanced Placement

HIST 105	AP/OTH CREDIT U.S. HISTORY	3.00	TR		
MATH 101	SINGLE VARIABLE CALCULUS I	3.00	TR		
MATH 102	SINGLE VARIABLE CALCULUS II	3.00	TR		

Earned Hrs	GPA-Hrs	QPts	GPA
9.00	0.00	0.00	0.00

Subj	No.	Title	Cred	Grade	Pts	R
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**INSTITUTION CREDIT:**

Fall Semester 2017

ENGL 309	WRITING FOR SOCIAL CHANGE	3.00	A	12.00	
PHIL 101	CONTEMPORARY MORAL ISSUES	3.00	A-	11.01	
PSYC 101	INTRODUCTION TO PSYCHOLOGY	3.00	A	12.00	
RELI 101	INTRO TO THE STUDY OF RELIGION	3.00	B+	9.99	
SWGS 327	20TH C. BRITISH WOMEN WRITERS	3.00	A	12.00	
UNIV 194	CTIS WORKSHOP	0.00	S	0.00	

Earned Hrs	GPA-Hrs	QPts	GPA
15.00	15.00	57.00	3.80

Good Academic Standing

Spring Semester 2018

FWIS 113	RACE, POLICY, & RACIAL CHANGE	3.00	A	12.00	
NEUR 380	NEUROSYSTEMS	3.00	A	12.00	
PSYC 339	STATISTICAL METHODS- PSYCHOLOGY	4.00	A	16.00	
SPAN 303	ADV SPAN BI-CULTURAL STUDENTS	3.00	A	12.00	
UNIV 250	RICE HEALTH ADVISORS	3.00	A+	12.99	

Earned Hrs	GPA-Hrs	QPts	GPA
16.00	16.00	64.99	4.06

President's Honor Roll

Good Academic Standing

Fall Semester 2018

Subj	No.	Title	Cred	Grade	Pts	R
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**INSTITUTION CREDIT:**

PHIL 103	PHIL ASPECT COGNITIVE SCIENCE	3.00	B+	9.99	
PSYC 202	INTRO TO SOCIAL PSYCHOLOGY	3.00	A	12.00	
PSYC 203	INTRO TO COGNITIVE PSYCHOLOGY	3.00	A	12.00	
PSYC 340	RESEARCH METHODS - PSYCHOLOGY	4.00	A	16.00	
SWGS 101	INTRO WOMEN & GENDER	3.00	A	12.00	

Earned Hrs	GPA-Hrs	QPts	GPA
16.00	16.00	61.99	3.87

President's Honor Roll

Good Academic Standing

Spring Semester 2019

ESCI 109	OCEANOGRAPHY	3.00	P	0.00	
NEUR 362	COGNITIVE NEUROSCIENCE	3.00	A-	11.01	
PSYC 231	INDUS & ORGANIZATIONAL PSYC	3.00	A	12.00	
SWGS 331	PSYCHOLOGY OF GENDER	3.00	A+	12.00	
SWGS 380	ENVIRONMENTS	3.00	A	12.00	

Earned Hrs	GPA-Hrs	QPts	GPA
15.00	12.00	47.01	3.91

Good Academic Standing

Fall Semester 2019

PSYC 333	MULTICULTURAL PSYCHOLOGY	3.00	A	12.00	
SOSC 405	LAW PRACTICUM	3.00	A	12.00	
SWGS 354	CHICANO/A LITERATURE	3.00	A+	12.00	
SWGS 465	GENDER AND HEALTH	3.00	A	12.00	
SWGS 494	PRE-SEMINAR: ENGAGED RESEARCH	1.00	S	0.00	

Earned Hrs	GPA-Hrs	QPts	GPA
13.00	12.00	48.00	4.00

President's Honor Roll

Good Academic Standing

Spring Semester 2020

In Spring 2020, a global public health emergency required changes to university operations. Students were permitted to designate additional courses P/F, and the drop deadline was extended.

LPAP 198	NUTRITION	1.00	A	4.00	
PSYC 321	DEVELOPMENTAL PSYCHOLOGY	3.00	A+	12.00	
PSYC 354	INTRO TO SOC/AFFECTIVE NEURO	3.00	A-	11.01	
SWGS 318	ISRAELI WOMEN WRITERS	3.00	A	12.00	
SWGS 496	ENGAGED RESEARCH PRACTICUM	3.00	A+	12.00	
SWGS 497	ENGAGED RESEARCH SEMINAR	3.00	A+	12.00	
UNIV 305	INTERNATIONAL SERVICE	2.00	A+	8.00	

Earned Hrs	GPA-Hrs	QPts	GPA
18.00	18.00	71.01	3.94

Good Academic Standing

Fall Semester 2020

PSYC 455	ADV SEM IN CLINICAL PSYCHOLOGY	3.00	A-	11.01	
PSYC 480	POSITIVE PSYCHOLOGY	3.00	A	12.00	
SOCI 325	SOCIOLOGY OF LAW	3.00	A	12.00	
SWGS 306	HUMAN SEXUALITY	3.00	A+	12.00	

Official

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University Registrar  
Rice University



RICE

William Marsh Rice University  
Houston, TX 77005

Student No: S01258649

Date of Birth: 30-NOV-1999

Date Issued: 03-JUN-2023 OFFICIAL

Record of : Lawryn Emani Brown

Subj	No.	Title	Cred	Grade	Pts	R
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**INSTITUTION CREDIT:**

Earned Hrs	GPA-Hrs	QPts	GPA
12.00	12.00	47.01	3.91

Good Academic Standing

**Spring Semester 2021**

PSYC	353	PSYC OF EMOTION & MOTIVATION	3.00	A+	12.00
SOCI	344	SOCIOLOGY OF MENTAL HEALTH	3.00	A	12.00
SWGS	250	SEX, MONEY, AND POWER	3.00	A	12.00
SWGS	370	READING BLACK RESISTANCE	3.00	A	12.00

Earned Hrs	GPA-Hrs	QPts	GPA
12.00	12.00	48.00	4.00

President's Honor Roll  
Good Academic Standing

Transcript Totals	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	117.00	113.00	445.01	3.93
TOTAL TRANSFER	9.00	0.00	0.00	0.00
OVERALL	126.00	113.00	445.01	3.93

-----END OF TRANSCRIPT-----

Official

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University Registrar  
Rice University

June 08, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to write in support of Emani Brown's clerkship application. I had the good fortune to meet Emani through a mentorship program at the University of Texas School of Law and I knew immediately that she is suited for this profession and will serve it honorably. We connected immediately as we are both Texas border natives, and first-generation and as the only lawyer/aspiring lawyer in our families. I directly supervised Emani's work as a summer intern, and we have stayed in close contact throughout her law school career. Based on my observations of her work and her character, I have no doubt that she would be an outstanding clerk.

At the time of her internship, I managed the Domestic Violence and Family Law Team at Texas RioGrande Legal Aid, Inc. (TRLA), which is the second-largest legal aid organization in the United States. The family law team is one of the largest litigation groups at TRLA and our mission is to represent indigent survivors of violence. In my sixteen years at TRLA, I have had many opportunities to work with and supervise young lawyers and law students. The work is challenging, both professionally and emotionally, and many talented people are not suited to the pace and unique trials of working at the intersection of crisis and poverty.

Emani distinguished herself as motivated and highly capable. I discovered quickly that she could handle a wide range of assignments as fast as we could give them to her and produce quality work without micromanagement. As a result, Emani was quickly assigned high-level assignments, such as drafting pleadings and correspondence, responding to discovery, and researching complex legal questions. Notably, Emani performed extensive, time-sensitive research on a case involving complex issues and The Hague Convention prior to a TRLA manager's oral argument before the Fifth Circuit (and was able to observe her research being used on the livestream).

Emani is a rare student and possesses skills and innate wisdom that set her apart from others. For example, Emani has excellent oral and written communication skills. She is also bilingual in English and Spanish, a capability which appears to be in short supply among lawyers, even in Texas. Of critical importance, her demeanor is professional and kind, and as a result, we entrusted her with interacting directly with clients. Emani develops trust and connections with ease, and I observed her generous mentorship of another TRLA intern, a first-generation college student with law school aspirations. I think Emani would never forget that an important part of working for the future is holding out a hand to those who come behind you.

In addition to doing great work, Emani is a pleasure to have on a team and was well-liked by all of her colleagues, including peers, attorneys, and support staff. Because of her initiative in seeking out real-life work opportunities involving research, litigation, self-representation clinics, and working a public interest internship during the school year, Emani would begin her clerkship with a unique breadth of experience. I most admire attorneys who can balance a strong work ethic with a commitment to public service, and I am confident that Emani would represent you well.

If given the opportunity to work with you, I know that Emani would succeed, and it is my pleasure to recommend her to you. I look forward to her very bright future and I am encouraged to know that the next generation of lawyers has her in it.

Warm Regards,

Jacquelyn V. Davis, Esq.  
Deputy Civil Director

Jacquelyn Davis - Jdavis@trla.org

June 08, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in support of Emani Brown's application for a clerkship in your chambers. I am the Interim Director and Visiting Professor for the Civil Rights Clinic at the University of Texas School of Law. During the course of Emani's involvement in the Clinic, I had the opportunity to supervise and evaluate her legal research and writing, collaboration with classmates and clients, as well as her legal strategizing, and oral advocacy. Having worked closely with her for the semester, I am honored to recommend her for a judicial clerkship position.

In the Clinic, Emani worked on a case involving the death of a man in a private immigration detention center. Though the litigation was at a slow point procedurally, our partner organization took the procedural lull as an opportunity to assign a myriad of research assignments as a way to get ahead of some of our future work. Week after week, Emani took on new and varied research assignments in preparation for mediation, possible settlement, or summary judgment. Our co-counsel wanted to fit in as many research assignments as possible so Emani was on a tight deadline for each assignment. She easily met every deadline and her research and writing were both excellent. Despite all the assignments, it even seemed like she was having fun! Emani was very skilled at understanding the question presented and identifying the best cases to address the question. For example, Emani presented very well-organized research on whether the affirmative defenses that had been raised by the defendant would likely be successful in our case. Though our co-counsel had already begun research on this assignment, Emani found a case that was exactly on point for the issue that our co-counsel had overlooked. She was also a very clear oral communicator. In addition to the drafted written memos on the research she conducted, she also presented them to our co-counsel in weekly Zoom meetings. Emani was effective at explaining her research and answering the questions our co-counsel had about the facts and court's reasoning.

Emani also worked on a policy research project involving worker safety and economic development tax incentives. This project required an entirely different skill set. She had no previous knowledge of this area of law or policy, but she dove right in and spent the semester researching how municipalities can ensure worker safety through their tax incentive contracts. The project required creativity, both in developing solutions, but also in making appropriate contacts. With very little guidance, she and her partner put together two comprehensive and well-written memos on the topic. This required they meet with experts in the field and research how municipalities in other states have been successful in protecting worker safety through tax incentives. It also required that they learn the mechanisms within Texas law to enforce such contractual worker safety issues. The two memos covered a large scope, but Emani's writing was cogent and concise. Despite the wide-ranging topics covered, Emani broke down the pieces to allow the reader to easily follow the proposed solutions and the possible barriers to the solutions. Throughout, it was a pleasure to watch Emani collaborate with her teammate. It was evident Emani was an ideal partner as she was always organized, generous, and positive.

Emani was one of the most consistently prepared and engaged students in the seminar component of the Clinic. The seminar is a twice-weekly seminar on civil rights law, in which I lecture on both civil rights laws and cases and claims and litigation procedure and skills. We incorporate broader issues into the discussion, such as professional identity, the complexities of the judicial landscape, inequity of access to the judicial system, and developing client relationships. In the Clinic seminar, Emani easily digested difficult material and demonstrated her engagement with complex legal issues, both substantive and procedural. She was an active participant in class and had a sophisticated understanding of constitutional law. I also appreciated how respectful Emani was of her classmates in the seminar. She carefully listened to other students and offered direct responses to their discussions.

Emani has shown herself to be a committed legal mind, but what stands out the most about her is her clear and warm communication style. She is both prepared and genuine. Throughout the semester, she asked important questions aimed at solving the problems in the legal system and demonstrated a deep understanding of how the legal system relates to the rest of our society. I admired Emani for the way she treated her classmates and the generosity she brought to her work. She worked with humility and care and the legal field needs more lawyers like her. The legal profession will be better because she will be in it and I am proud to count myself as one of her colleagues.

If you have any questions or need any additional information, please call me at (512) 699-1845 or [lia.davis@law.utexas.edu](mailto:lia.davis@law.utexas.edu). I'd be happy to talk more about Emani's qualifications.

Sincerely,

Lia Sifuentes Davis  
Visiting Clinical Professor of Law and  
Interim Director of the Civil Rights Clinic  
The University of Texas School of Law

Lia Sifuentes Davis - [lia.davis@law.utexas.edu](mailto:lia.davis@law.utexas.edu) - (512) 232-7222

June 08, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to write in support of Emani Brown's application for a clerkship in your chambers. Emani was a student in my Legal Analysis and Communication class, our first-year legal-writing course. In this course, students prepare a series of written assignments, including two full legal memoranda using their own research along with preliminary problems using a packet of authorities.

Emani is a shining star. Many things stand out about Emani, in addition to her legal research and writing skills. She has an inimitable warmth and personable presence in every situation. It is a joy to be around her. She brings her best to every situation. She is intellectually curious, hard-working, and dedicated to improving her already-excellent skills. Rarely have I encountered a student so determined to develop her professional skills. She took advantage of every opportunity to do better with each assignment, and she consistently did so. She has a can-do attitude and is not afraid to ask appropriate questions to deliver the highest-quality work product.

Emani would be a wonderful asset in any chambers, especially one that involves interaction with practicing attorneys. If you interview Emani, you will notice her sunny disposition. What's wonderful is that she is also mature, firm, and steady. I think she would be able to manage with ease interactions some new graduates find difficult.

Over my nearly 30-year career, which has included clerking, practicing law, and teaching, Emani stands out as a student and young lawyer whose career I will eagerly watch. I expect her to do great things.

I hope you will give Emani's application serious consideration.

Sincerely,

Lori R. Mason  
Lecturer, The David J. Beck Center for Legal Research, Writing, and Appellate Advocacy  
The University of Texas School of Law

Lori Mason - [lmason@law.utexas.edu](mailto:lmason@law.utexas.edu) - 5126988439

**Ms. Lawryn Emani Brown**  
4600 Mueller Blvd, Austin, TX 78723 | 915-926-9087 | emani.brown@utexas.edu

**WRITING SAMPLE**

This writing sample is a memorandum I wrote as a student attorney in the Civil Rights Clinic. I was granted permission to use this memo as a writing sample by the co-counsel for whom this research was done. All sensitive and identifying information has been redacted from the work or changed to pseudonyms in order to maintain client confidentiality.

**MEMORANDUM**

**From:** Emani Brown

**To:** Non-Profit Organization

**Date:** May 6, 2023

**Re:** Responding to Affirmative Defenses in a Wrongful Death Suit

**QUESTION PRESENTED**

1. Can an Immigration Detention Center (“IDC”) successfully assert, under Section 93 of the Texas Civil Practice & Remedies Code, the affirmative defense of suicide, or invoke the common law unlawful acts doctrine against a survivorship action when the defendant allegedly breached their duty of care, and the act of suicide was foreseeable?
2. Under Section 33 of the Texas Civil Practice & Remedies Code, can an IDC successfully assert an affirmative defense of proportionate responsibility against a survivorship action to bar recovery when the alleged negligence occurred while Mr. Jones was under the sole care and supervision of the IDC staff?

**BRIEF ANSWER**

1. Likely not. IDC owed a legal duty of care to Mr. Jones, and the exclusive act of Mr. Jones committing suicide is insufficient on its own to render him liable for his death. The Texas Supreme Court understood the legislative shift to a proportionate responsibility scheme as an indication of an intent to reduce recovery, rather than completely bar it, and held that the unlawful acts doctrine was therefore not a viable defense. *Dugger v. Arredondo*, 408 S.W.3d 825, 830-32 (Tex. 2013). Furthermore, to attribute causation for breach of a mental health standard of care to Mr. Jones, whose undiagnosed mental impairment was the very cause of the injury, would be “clearly contrary” to legislative intent. See *RioGrande Regional*



*Hospital v. Villareal*, 392 S.W.3d 594, 623 (Tex. App. — Corpus Christi 2010). Mr. Jones was struggling with his mental wellbeing while at IDC, and IDC violated an applicable standard of care by not responding to it. IDC is liable, not Mr. Jones. Therefore, a court is unlikely to find merit in an invocation of the suicide defense or the unlawful acts doctrine.

2. Likely not. IDC owed a legal duty of care to Mr. Jones, and the exclusive act of Mr. Jones committing suicide cannot serve to bar recovery. Under Chapter 33, a claimant is only completely barred from recovering damages if their percentage is greater than fifty percent. Tex. Civ. Prac. & Rem. Code Ann. § 33.001. The theory of this case is that Mr. Jones’ action of committing suicide was not “the sole cause of the damages sustained,” but rather that his death flowed from IDC’s negligence. See Tex. Civ. Prac. & Rem. Code Ann. § 93.001(a)(2). Where a plaintiff didn’t take any actions apart from the act of committing suicide that violated an applicable standard of care, there is no proportionate responsibility. *RioGrande Regional Hospital v. Villareal*, 392 S.W.3d 594, 624 (Tex. App. — Corpus Christi 2010). IDC violated an applicable standard of care; Mr. Jones did not. Furthermore, Texas courts have understood the proportionate responsibility statute to trump the common law unlawful acts doctrine and as circumventing the suicide defense. See *Dugger*, 408 S.W.3d at 832; *RioGrande Regional Hospital*, 329 S.W.3d at 623. Thus, IDC is unlikely to be successful in asserting the proportionate responsibility defense to bar recovery.

## STATEMENT OF FACTS

[OMITTED]

## DISCUSSION

- I. IDC is unlikely to be successful in asserting the unlawful acts doctrine or the affirmative defense of suicide since Mr. Jones did not take any action that violated an applicable standard of care, apart from the act of committing suicide.**

Texas courts have long understood the proportionate responsibility statute to trump the common law unlawful acts doctrine and as circumventing the suicide defense. *See Dugger*, 408 S.W.3d at 832; *RioGrande Regional Hospital*, 329 S.W.3d at 623. Where both the affirmative defense of suicide and proportionate responsibility are invoked, the affirmative defense of suicide has no merit if the defendant breached an applicable duty of care and caused the suicide in whole or in part. *RioGrande Regional Hospital*, 329 S.W.3d at 624. Where both the common law unlawful acts doctrine and proportionate responsibility defense are asserted, the court has found that the common law unlawful acts doctrine is not a viable defense within the confines of the proportionate responsibility statute. *Dugger*, 408 S.W.3d at 832.

Where there is no evidence that the decedent took any actions that violated an applicable standard of care, apart from the act of committing suicide, there is no proportionate responsibility. *RioGrande Regional Hospital*, 329 S.W.3d at 624. In *RioGrande Regional Hospital*, the court held that it was error for the lower court to submit the decedent's proportionate responsibility defense after the jury had already rejected the appellants' suicide affirmative defense. *Id.* The survivors of a hospital patient who committed suicide while in the hospital's care filed a suit against the hospital asserting medical malpractice and wrongful death. *Id.* at 604. Included in the negligence claims was a claim that the appellants "fail[ed] to properly and timely monitor and/or check" on the decedent. *Id.* The court reasoned that to attribute causation for breach of a mental health standard

of care to the patient whose undiagnosed mental impairment was the very cause of the injury would be “clearly contrary” to §93.001(a)(2)’s intent. *Id.* at 623 (citing *Dowell*, 262 S.W.3d at 337 (O’Neill, J., dissenting)). The court also stated that discussion of the decedent’s proportionate responsibility under Section 33.001 circumvents discussion under Section 93.001(a)(2). *Id.* Section 93.001 states that the affirmative defense of suicide may not be asserted if the defendant breaches an applicable duty of care and causes the suicide in whole or in part. *Id.* at 624. If the act or omission (in this case, the suicide) is reasonably foreseeable at the time of the defendant’s alleged negligence, it can be considered a “concurring cause as opposed to a superseding or new and independent cause.” *Id.* at 617, citing *Columbia Rio Grande Healthcare, L.P. v. Hawley*, 284 S.W.3d 851, 857 (Tex. 2009). The court, in applying Supreme Court precedent, held that the decedent’s suicide, “at best, [c]ould be considered a concurrent cause.” *Id.* at 619. Based on the reasoning set out by this court, a decedent’s suicide will likely not be found to support an assertion of the proportionate responsibility defense.

Furthermore, the Legislature’s adoption of the proportionate responsibility scheme is indicative of its intention to apportion responsibility where appropriate, rather than bar recovery completely. *Dugger*, 408 S.W.3d at 827. In *Dugger*, a mother brought a wrongful death action against her son’s friend, following her son’s death after ingesting heroin. *Dugger*, 408 S.W.3d at 827. She alleged that the friend was negligent in delaying calling emergency services and failing to advise paramedics that her son had ingested heroin. *Id.* The defendant asserted both the proportionate responsibility defense and the unlawful acts doctrine. *See Id.* The Court analyzed how the proportionate responsibility defense and the unlawful acts doctrine coexist. *Id.* The Court stated that the legislative shift to a proportionate responsibility scheme indicated an intent to reduce recovery, rather than completely bar it. *Id.* at 830. Because of this understanding of legislative

intent, the Court concluded that the unlawful acts doctrine was not a viable defense under the confines of the proportionate responsibility statute. *Id.* at 832. The Court accordingly affirmed the judgment of the court of appeals, which reversed the summary judgment for the defendant and remanded the case to the trial court. *Id.* at 836.

Just as in *RioGrande Regional Hospital*, Mr. Jones committed suicide while in the care and under the supervision of the IDC's medical team. See *RioGrande Regional Hospital*, 329 S.W.3d at 624. Additionally, Mr. Jones' act of suicide was also reasonably foreseeable. *Id.* at 617. Upon his arrival to IDC, he told a nurse that he had been threatened by drug traffickers. IDC\_00081. About a month later, after his CFI, a case manager at IDC emailed the mental health team to request an evaluation, given the bad news that Mr. Jones had recently received about his asylum case. Jones\_00000049. The unnamed case manager noted that Mr. Jones appeared "upset and sad." Jones\_00000049. Thus, IDC was aware of how Mr. Jones' negative CFI result affected him emotionally. IDC ignored the accumulation of evidence of Mr. Jones' mental distress and potential suicidality. Prior to Mr. Jones' death, IDC was aware of at least three of the four of the "Suicide Risk Indicators Often Observed" listed on slides in an untitled IDC training on suicidality — namely, that Mr. Jones had recently received bad news from a court hearing; he reported insomnia; and he told the psychologist that he experienced anxiety. IDC\_000924. Because of this, a court would likely reason, just as the court did in *RioGrande Regional Hospital*, that to attribute causation for breach of a mental health standard of care to Mr. Jones, whose undiagnosed mental impairment was the very cause of the injury, would be "clearly contrary" to legislative intent. *RioGrande Regional Hospital*, 329 S.W.3d at 623.

Although the facts in *Dugger* are distinguishable from Mr. Jones' case, *Dugger* highlights the way affirmative defenses commonly asserted together in wrongful death cases interact based